

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 CLARIFICATION AND RE-HEARING**

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 F.S. § 9.330 (a)(1) and states as follows:

SUMMARY

I. Petitioner's initial lawsuit

On April 30, 2024, Petitioner filed suit against BORA. Petitioner filed suit against BORA in the 17th Judicial Circuit in and for Broward County seeking injunctive and declaratory relief and alleging *inter alia* that BORA:

- 1. Is neither competent nor qualified to act as the county compliance review board, and;**
- 2. As a result of being a county agency, 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,**

The lawsuit sought essentially the same relief as sought in the present action before the Florida Building Commission and over a period of seven (7) months Petitioner filed a 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.

After a two (2) hour special set hearing before the Hon. Martin Bidwell, Petitioner's suit was dismissed on November 21, 2024 where Petitioner failed to establish standing to file the lawsuit in the first place with the Court stating specifically:

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 "A." See copy of hearing transcript attached hereto as **Exhibit "B."**

Petitioner failed to amend his pleadings as directed by the Court and after waiting two (2) months, BORA filed its Motion for Dismissal with Prejudice on January 27, 2025 which was then set for hearing on February 3, 2025.

II. Petitioner's second bite at the apple.

On January 30, 2025, and while the lawsuit was still active in the 17th Judicial Circuit, Petitioner filed an appeal with BORA which he declared to be a "challenge" despite filling out the appeal forms per BORA Policy Section 95-01. A review of Petitioner's challenge determined that it was practically identical to the lawsuit filed in the Circuit Court and thereby an improper attempt to split causes of action between the 17th Circuit and the Board of Rules and Appeals thus rendering the challenge/ appeal repugnant.

In addition to Petitioner's improper attempt to split causes of action, the challenge/ appeal also failed to state a cause of action because Petitioner had still failed to comply with conditions precedent necessary to establish standing as set forth in F.B.C. Section 113.9.1 which 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 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.

As was shown to the Court of the 17th Judicial Circuit, Petitioner could not establish standing where his challenge/ appeal failed to establish that there was a decision by the Building Official, Assistant Building Official or Chief Inspector wherein such decision was on matters regulated by the Florida Building Code and that Petitioner was not aggrieved in any fashion.

The hearing set for February 3, 2025 was canceled by the Court and while waiting for a rescheduled date, Petitioner then voluntarily dismissed his lawsuit on March 16, 2025. See Notice of Voluntary Dismissal filed by Petitioner in the 17th Judicial Circuit attached hereto as **Exhibit "C."**

After Petitioner's voluntary dismissal of his baseless lawsuit against BORA, his January 30, 2025, challenge/appeal to BORA was reviewed and upon considering all of the facts and evidence, it was determined that Petitioner had failed to state a claim because he couldn't show that he had been aggrieved by the decision of a Building Official, Assistant Building Official or Chief Inspector anywhere. In this case, BORA did not render an Opinion but rather set forth an extensive review of the challenge / appeal so as to explain to Petitioner and any subsequent judicial or administrative body that Petitioner doesn't have standing because he doesn't have a

“valid, present and justiciable controversy” exactly as was noted by the Court in its Order of Dismissal. See Order attached as **Exhibit “A”** and Declination of Review attached hereto as **Exhibit “D.”**

III. Petitioner’s third bite at the apple

After: 1) being dismissed by the 17th Judicial Circuit and (Petitioner’s subsequent voluntary dismissal of the entire action); 2) BORA’s review of Petitioner’s challenge/ appeal and subsequent declination to render a decision based on Petitioner’s failure to state a claim/ lack of standing; 3) Petitioner then filed his petition for hearing with the Florida Building Commission (“the Commission”) under F.S. 553.73(4)(g) appealing a decision by BORA. The simple truth is that BORA never rendered a decision, only a declination to render a decision - because Petitioner never had standing to file an appeal in the first place so that any opinion by BORA would be speculative.

Petitioner extensively briefed his position before the Commission and BORA responded in turn, after which the Commission heard argument from both parties on August 12, 2025 and filed its Order denying the petition for hearing on August 26, 2025.

The Order of August 26, 2025 is straightforward in its review, analysis and the ultimate determination that :

Paragraph 553.(4)(g), Florida Statutes (2025), clearly and explicitly provides that **the written determination of a compliance review board** regarding the compliance of local amendments with the provisions of subsection 553.13(4), Florida Statutes (2025), **may be appealed to the Commission. There has been no such determination made in this instance. And the Commission declines to adopt Petitioner's theory that BORA's failure, to date, to conduct a hearing or issue a determination on the matter serves as the equivalent.**
See Order denying Petitioner’s Motion for Hearing attached hereto as **Exhibit “E.”**

The Order of the Commission is an accurate summary of the facts in evidence and as set forth in the previous determinations by the Circuit Court and BORA

In emails to BORA (April 29, 2025) and in his Petition for Hearing to the Commission under F.S. 553.73 (4)(g), Petitioner incorrectly states that BORA's declination to review his baseless appeal constitutes "*a denial which serves as a denial of the "challenge" petition and its requested Order.*" See Petition for Hearing (May 6, 2025) at page 4. See also pages 5 and 8. **That statement by Petitioner is unequivocally false and contrary to both the facts and the law.**

The 17th Judicial Circuit Court has ruled that Petitioner's claims could not be addressed because he does not have standing to file a Complaint. Petitioner's appeal to BORA was essentially identical to his lawsuit in the 17th Circuit and accordingly, BORA properly declined to render an opinion where such an opinion would be speculative in nature which is the exact same position as taken by the Circuit Court.¹ This is also the position taken by the Commission in its Order filed August 26, 2025, i.e., that "*the written determination of a compliance review board regarding the compliance of local amendments with the provisions of subsection 553.13(4), Florida Statutes (2025), may be appealed to the Commission. There has been no such determination made in this instance.*"

IV. Petitioner's attempted fourth bite at the apple is improper.

After: 1) dismissal in the 17th Circuit; 2) denial of review by BORA for lack of standing and; 3) denial of review by the Commission, Petitioner has returned to the Commission trying to wheedle and cajole the Commission into providing answers to its Motion for Clarification on issues for which it has no standing.'

¹ An opinion or Order must be based on the application of law to a properly defined set of facts. This is necessarily impossible in the case at bar where any opinion or Order would require speculation that Petitioner might be able to obtain standing **if** he were to comply with the conditions necessary to obtain standing in the first place.

Petitioner asks 1) Whether BORA is the countywide compliance review board that must issue a written determination of BORA's compliance with §553.73(4), Fla. Stat. and; 2) How must the countywide compliance review board's written determination be rendered?

i. Petitioner is without standing and without basis to seek clarification

In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error. See *Joseph v. Henry*, 367 So.3d (Fla. 3rd DCA 2023). Further to that end, an appellant cannot seek a motion for clarification on issues for which they do not have standing. Florida courts consistently emphasize that standing is a threshold issue that must be resolved before addressing the merits of a case..

In *Florida AG v. Jimenez*, 180 So. 3d 248 (Fla. 3rd DCA 2023), the court struck the appellant's motion to modify or vacate a stay because the appellant lacked standing, citing the principle that standing is a prerequisite for judicial review. See *Jimenez* at 249 ("For a court of law operating as one of the three branches of government under the doctrine of the separation of powers, standing is a threshold issue which must be resolved before reaching the merits of a case. Before a court can consider whether an action is illegal, the court must be presented with a justiciable case or controversy between parties who have standing.").

In *Solares v. City of Miami*, 166 So. 3d 887, the court reiterated that standing cannot be presumed or granted merely because no other party might have standing, as this would undermine the legal requirement for a justiciable controversy. See *Solares* at 888.

Additionally, Florida Rule of Appellate Procedure 9.330(b) specifies that a motion for clarification must address points of law or fact that the court has overlooked or misapprehended, but it does not permit the introduction of issues for which the movant lacks standing. In so saying, Petitioner's inquiry as to: 1) Whether BORA is the countywide compliance review board that must issue a written determination of BORA's compliance with

§553.73(4), Fla. Stat. and; 2) How must the countywide compliance review board's written determination be rendered cannot be addressed by the Commission.

This aligns with the broader principle that a party must demonstrate a direct and articulable stake in the outcome of the proceedings to have standing, as highlighted in Eger v. Judges of the Twelfth Judicial Circuit, 369 So. 3d 1226 (Fla. 2d DCA 2023).

Standing "requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." See Hayes v. Guardianship of Thompson, 952 So. 2d 498, 505 (Fla. 2006); see generally Brown v. Firestone, 382 So. 2d 654, 662 (Fla. 1980) ("[T]his Court has long been committed to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy."); Weiss v. Johansen, 898 So. 2d 1009, 1011 (Fla. 4th DCA 2005) ("Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation.").

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.. See 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 to review was not a denial of Petitioner's claims, rather it reflects the same straightforward analysis as the 17th Judicial Circuit wherein the Court stated:

Page 3

17 The -- having considered all of the
18 arguments, respectfully, I -- I'm not convinced
19 that this pleading sets out a sufficient need
20 for a declaration. I think that the pleading
21 fails to set out that there is a sufficient
22 current controversy between the plaintiff and
23 BORA that would provide the Court the authority
24 to issue a declaration.
The Court stated further:

Page 4

**14 THE COURT: -- at this point, what I'm
15 going to do is grant the motion to dismiss for
16 failure to state a claim on the dec count. The
17 injunctive count, obviously, is dependent upon
18 the existence of the dec count. It would fail
19 for the same -- for that same reason.**

20 And I'll afford Mr. Butler -- I think I'll
21 give him a chance to -- to amend and see if he
22 can find something else out there.

23 MR. KRAMER: Thank you, Your Honor.

24 THE COURT: To the extent there's -- you
25 know, nobody really talked about it, but

Page 5

I Mr. Kramer's argument is that, you know,
2 exhaustion wasn't done here. Part of
3 Mr. Butler's response is, well, that would have
4 been a waste of time. I don't -- you know,
5 words to that effect. That's not what he
6 said --

7 MR. KRAMER: Exactly.

8 THE COURT: -- obviously, but it sounded
9 like a futility argument.

10 I don't know if there's exceptions to the
11 exhaustion requirement. I haven't done that
12 research lately. But I would think that if
13 you're contending that exhaustion is futile or
14 words to that effect, I think you've got to
15 plead around that, in all honesty.

16 So, at this point in time, that will be
17 the ruling. I'll grant the motion to dismiss.

18 Mr. Butler, how long would you need to
19 file an amended complaint, if you so choose?

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

22 THE COURT: Okay. Thirty days will be it.

23 And, Mr. Kramer, would you be kind enough.

24 as the prevailing party, to send me an order
25 that grants the motion to dismiss for the

Page 6

1 reasons stated on the record and affords
2 Mr. Butler 30 days to file an amended
3 complaint?
4 MR. KRAMER: I certainly will, Your Honor.

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

BORA 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;

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

The Commission recognized in its Order of August 26, 2025 that a declination to review by BORA is not the same thing as a denial where the Commission stated:

8. Paragraph 553.73 (4)(g) Florida Statutes (2025), clearly and explicitly provides that the written determination of a compliance review, board regarding the compliance of local amendments with the provisions of subsection 553.13(4), Florida Statutes (2025), may be appealed to the Commission. There has been no such determination made in this instance. and the Commission declines to adopt Petitioner's theory that BORA's failure, to date, to conduct a hearing or issue a determination on the matter serves as the equivalent.

See Commission Order Denying Petition for Review at par.8

ii. Petitioner may not present questions which were not raised in its appeal

Petitioner asks;

Did the Commission accept BORA's argument that it was a valid countywide review board when it concluded, "BORA's failure, to date, to conduct a hearing or issue a determination on the matter" was not a "written determination" sufficient to initiate an appeal (p 3)? Or did the Commission accept Petitioner's argument and find that BORA failed to meet the statutory requirements of a countywide compliance review board because of the manner in which it was created and, therefore, cannot render an independent compliance determination?

Neither of these questions were raised in Petitioner's Appeal of July 25, 2025 and a motion for clarification cannot ask questions or raise issues that were never raised in the appeal. Under Florida law, a motion for clarification is specifically intended to address points of law or fact in the administrative body's or court's order that, in the movant's opinion, require clarification. It is not a procedural vehicle to introduce new issues or arguments that were not previously raised in the proceeding.

Florida Rule of Appellate Procedure 9.330(a)(2)(B) explicitly states that a motion for clarification must state with particularity the points of law or fact in the court's order or decision that are in need of clarification, and it does not permit the presentation of new issues.

In Atlantic Gulf Communities Corp. v. City of Port St. Lucie, 764 So. 2d 14 (Fla. 4th DCA 1999) " the court denied a motion for rehearing and clarification, noting that the arguments presented were not previously raised in the trial court or on appeal.

In Little v. State, 913 So. 2d 1289 (Fla. 2d DCA 2005)," the court emphasized that a motion for clarification is not authorized to address issues not previously raised and must adhere to procedural rules.

These rulings reinforce the requirement that motions for clarification are limited to addressing ambiguities or uncertainties in the court's prior decision, not to introduce new matters. In the case at bar,

iii. Petitioner's Motion for Rehearing is baseless

A motion for rehearing is intended to bring to the attention of the administrative agency or tribunal any point of law or fact that was overlooked or misapprehended in the original decision. It is not a mechanism for rearguing the entire case or expressing disagreement with the judgment. See Diamond Cab Co. v. King, 146 So. 2d 889(Fla. 1962); Lowe Inv. Corp. v. Clemente, 685 So. 2d 84, (Fla. 2d DCA 1996).

Specific grounds for rehearing may include errors on the face of the record, errors committed during the hearing, newly discovered evidence, or the failure of the tribunal to make required findings of fact

In the case at bar, a judicial admission is a formal, undeniable statement of fact made by a party in a court proceeding, such as in a pleading or during testimony, that removes the fact from dispute in the litigation and eliminates the need for the opposing party to prove it. These admissions are conclusive, meaning the party who made the admission is bound by it and cannot later contest the fact.

From a technical perspective, judicial admissions, as governed by Fla. R. Civ. P. 1.370, may have implications in litigation, but they do not typically serve as grounds for a motion for rehearing. Instead, a motion for rehearing under Fla. R. Civ. P. 1.530 is designed to address errors, omissions, or oversights in the court's prior rulings, including those involving judicial admissions, if such errors are alleged to have affected the judgment.

Petitioner mistakenly claims that:

If the Commission answers the second question by agreeing with the assertion that there is no specific form or creation process required for the written determination, then Petitioner asserts BORA provided such a written determination through judicial admissions in its Response to Butler's appeal petition.

See Petition at pg. 6

Petitioner states that:

[P]ages 40-46 of the appeal petition listed seven alleged errors in BORA's 2023 local amendment adoption process. BORA answered each of these allegations on pages 24-28 of its Response through a series of judicial admissions that collectively serve as a written determination that BORA complied with the requirements of §553.73(4), Fla. Stat. BORA even titles this portion of the Response on page 24 as "BORA's Adoption of Local Amendments Was Lawful and in Full Compliance with Section 553.73(4), Florida Statutes (Claim 3)." That statement alone may be sufficient to serve as a written determination of compliance.

See Motion for Clarification/ Rehearing at page 7

First of all, Petitioner fails to cite how or why any counterargument by BORA in pages 24-28 which might constitute an “admission” upon which he could seek a rehearing. BORA has propounded counter-argument none of which constitutes “judicial admissions.” A review of BORA’s answers on pages 24-28 addressing Petitioner’s allegations show that NONE of them could be considered “judicial admissions” and Petitioner’s red-herring claims cannot be attended.

Second of all, no amount of straw grasping can save Petitioner from the underlying baselessness of his claims where he fails to show that he is an adversely affected party who has received “the written determination of a compliance review board regarding the compliance of local amendments within the provisions of subsection 553.13(4), Florida Statutes (2025), which may be appealed to the Commission. Furthermore, there has been no such determination made in this instance, and the Commission rightfully and properly declined to adopt Petitioner’s theory that BORA’s failure, to date, to conduct a hearing or issue a determination on the matter serves as the equivalent.

It should not be lost on the Commission that throughout the entirety of Petitioner’s Appeal, Replies, and supplements has Petitioner ever addressed the fact that he is without standing.

iv. Prohibition as to legal advice

After an exhaustive review of Petitioner’s Motion for Clarification/ Rehearing it is apparent that what Petitioner is actually seeking is legal advice as to what claims he might have if had an actual claim.

In the case at bar, judicial admissions under Rule 1.370 cannot be established where Petitioner had no standing and therefore, no basis to seek relief in the first place. While a motion for rehearing under Rule 1.530, provides a potential mechanism for the trial court to reconsider its judgment, Petitioner must clearly establish that an error occurred.

The Florida Building Commission, is an administrative body and as such is not permitted to provide legal advice to a petitioner under Florida law. Its role is limited to issuing interpretations, advisory opinions, or declaratory statements regarding the Florida Building Code or related matters, as outlined in the statutes.

More specifically, under Fla. Stat. § 553.775, the Commission is authorized to issue interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction. These interpretations are based on the code's language or intent and are binding unless superseded by a declaratory statement or final order after an appeal. The Commission's role is procedural and technical, focusing on resolving issues related to the application of the building codes not to function as advisory counsel. See Fla. Stat. § 553.775, 61G20-2.007, F.A.C..

Fla. Stat. § 553.73 also allows the Commission to issue nonbinding advisory opinions on whether certain regulations or provisions constitute technical amendments to the Florida Building Code however, such advisory opinions are not declaratory statements under Fla. Stat. § 120.565 and do not constitute legal advice Fla. Stat. § 553.73.

Fla. Stat. § 553.77 permits the Commission to issue declaratory statements under Fla. Stat. § 120.565 upon written application by a substantially affected person. Such declaratory statements address specific questions about the application of the Florida Building Code but do not extend to providing legal counsel. Petitioner, Butler is not a “substantially affected party” as determined by the facts of this case and as further buttressed by the Order of the 17th Judicial Circuit Court .

In summary, the Florida Building Commission's statutory authority is confined to technical and procedural matters related to the Florida Building Code, and it does not include the provision of legal advice to petitioners Fla. Stat. § 553.775, Fla. Stat. § 553.73, Fla. Stat. § 553.77.

The Commission was correct in its Denial of Petitioner's appeal and the words of its Order reflect a well-considered summary of applicable law where:

Paragraph 553.73 (4) (g), Florida Statutes (2025), clearly and explicitly provides that the "written determination of a compliance review board regarding the compliance of local amendments with the provisions of subsection 553.13(4), Florida Statutes (2025), may be appealed to the Commission. [However] there has been no such determination made in this instance". "Further the Commission declines to adopt Petitioner's theory that BORA's failure, to date, to conduct a hearing or issue a determination on the matter serves as the equivalent." See Order of Commission at par 8. See also Fla. Stat. § 553.77.

See Order Denying Petition for Hearing, August 26, 2025

BORA hereby incorporates by reference its Response by the Broward County Board of Rules and Appeals to Petition for Hearing Under F.S. §553.73(4)(g) filed with the Florida Building Commission July 25, 2025..

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 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 6th day of October, 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

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**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

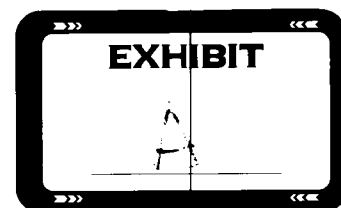
Defendant(s) / Respondent(s)

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.

[Handwritten signature]
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Hon. Martin Bidwill
CIRCUIT COURT JUDGE
Electronically Signed by Martin Bidwill

Copies Furnished To:

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1 IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
2 IN AND FOR BROWARD COUNTY, FLORIDA
3 CASE NO.: CACE24-005922

4 JACK A. BUTLER, an Individual,
5
6 Plaintiff,

7 -vs-

8 BROWARD COUNTY BOARD OF RULES AND
9 APPEALS,
10
11 Defendant.

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14 EXCERPT OF PROCEEDINGS
15 "JUDGE'S RULING"

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18 HEARING BEFORE THE HONORABLE
19 MARTIN J. BIDWILL

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21
22 Monday, November 18, 2024
23 10:24 a.m. - 11:22 a.m.

24
25 LOCATION: REMOTE

26 Stenographically Reported Via Web Conference By:
27 LOIS L. MCINNIS-KELLEHER
28 Stenographic Reporter

1 APPEARANCES: (All appearing via web conference)

2

3 On behalf of the Plaintiff:

4 JACK A. BUTLER, PRO SE
5 301 Avalon Road
6 White Garden, Florida 34787
7 Phone: 407-717-0247
8 abutler@mpzero.com

7

8

9 On behalf of the Defendant:

10 CHARLES M. KRAMER, ESQUIRE
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16 ckramer@bmwlawyers.net

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1 (Thereupon, the following proceedings were
2 had:)

3 * * * * *

4 THE COURT: Okay. Thank you very much to
5 all of you. The -- as I said at the beginning,
6 I appreciate that. Obviously, it was a very
7 detailed briefing of these issues that were
8 presented by the motion to dismiss and I
9 reviewed them all on Friday, I believe, and
10 read all the papers. I have listened to your
11 arguments here today and I think what I'm going
12 to do is as follows:

13 I've got -- essentially, this complaint is
14 a -- a claim for declaratory relief and a -- a
15 concomitant claim for injunctive relief that
16 would flow from any declaration.

17 The -- having considered all of the
18 arguments, respectfully, I -- I'm not convinced
19 that this pleading sets out a sufficient need
20 for a declaration. I think that the pleading
21 fails to set out that there is a sufficient
22 current controversy between the plaintiff and
23 BORA that would provide the Court the authority
24 to issue a declaration.

25 Additionally, there is, it would appear to

1 me, based upon the allegations, a -- a
2 colorable issue here that there was no
3 exhaustion through proper channels of
4 administrative remedies that are a
5 prerequisite --

6 MR. KRAMER: Thank you.

7 THE COURT: -- for suit against this
8 agency.

9 Having said that, and Mr. Butler made some
10 arguments that sound like an effort to raise
11 facts that are just not in his complaint, I
12 don't think. And so --

13 MR. KRAMER: Thank you, Your Honor.

14 THE COURT: -- at this point, what I'm
15 going to do is grant the motion to dismiss for
16 failure to state a claim on the dec count. The
17 injunctive count, obviously, is dependent upon
18 the existence of the dec count. It would fail
19 for the same -- for that same reason.

20 And I'll afford Mr. Butler -- I think I'll
21 give him a chance to -- to amend and see if he
22 can find something else out there.

23 MR. KRAMER: Thank you, Your Honor.

24 THE COURT: To the extent there's -- you
25 know, nobody really talked about it, but

1 Mr. Kramer's argument is that, you know,
2 exhaustion wasn't done here. Part of
3 Mr. Butler's response is, well, that would have
4 been a waste of time. I don't -- you know,
5 words to that effect. That's not what he
6 said --

7 MR. KRAMER: Exactly.

8 THE COURT: -- obviously, but it sounded
9 like a futility argument.

10 I don't know if there's exceptions to the
11 exhaustion requirement. I haven't done that
12 research lately. But I would think that if
13 you're contending that exhaustion is futile or
14 words to that effect, I think you've got to
15 plead around that, in all honesty.

16 So, at this point in time, that will be
17 the ruling. I'll grant the motion to dismiss.

18 Mr. Butler, how long would you need to
19 file an amended complaint, if you so choose?

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

22 THE COURT: Okay. Thirty days will be it.

23 And, Mr. Kramer, would you be kind enough,
24 as the prevailing party, to send me an order
25 that grants the motion to dismiss for the

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

4 MR. KRAMER: I certainly will, Your Honor.

5 Now, I just -- I think we have a -- do we
6 have a status conference coming up in the next
7 couple of --

8 THE COURT: That's the next thing I was
9 going to address and let me --

10 MR. BUTLER: December 16th.

11 THE COURT: Yeah. So we'll -- we'll reset
12 that. I'll put that on for -- I'll probably
13 put it on -- why don't we put it on for
14 January 27th --

15 MR. KRAMER: Okay.

16 THE COURT: -- just as a placeholder.

17 Now, if you get a motion or you get an
18 amended complaint and you're going to move
19 again, just email my office and we'll set that
20 up for an additional hearing.

21 Okay?

22 MR. KRAMER: Will do. Great.

23 MR. BUTLER: We also have a hearing on my
24 motion for summary judgment set for January
25 30th that you'll need to cancel.

1 THE COURT: Yeah. Let me make a note of
2 that. Thanks for letting me know that, too, as
3 well.

4 So I'm going to -- we'll set a 1/27 CMC
5 conference on -- that will be the Monday of
6 that week. I'll go ahead and just cancel this
7 MSJ right now, in light of the ruling. And --
8 and, you know, if the complaint is amended and
9 it survives a -- a subsequent motion, then, of
10 course, I'll hear any other motions, at that
11 point.

12 Okay?

13 MR. KRAMER: Very good. Thank you,
14 Your Honor.

15 MR. BUTLER: Thank you, sir. I appreciate
16 all your time.

17 THE COURT: Thank you to all of you. I
18 appreciate your --

19 MR. KRAMER: Yeah. Thanks for all the
20 time you put into this. It must be 250 pages.

21 THE COURT: Well, I appreciate it.
22 Obviously, I meant it. Everybody -- there's a
23 lot of detailed information there that was
24 actually --

25 MR. KRAMER: Oh, yeah.

1 More than you ever wanted to know, right?

2 THE COURT: Well, have a good day. Thanks
3 to both -- both of you. Okay. Take care.

4 MR. KRAMER: Thanks. Have a great week,
5 Your Honor.

6 THE COURT: Bye-bye.

7 MR. KRAMER: Bye.

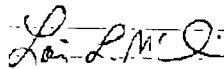
8 (Thereupon, the hearing was
9 concluded at 11:22 a.m.)

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CERTIFICATE OF REPORTER

I, Lois L. McInnis-Kelleher, do hereby
certify that I was authorized to and did report the
foregoing proceedings, and that the transcript is a
true and correct record of my stenographic notes.

Dated this 18th day of November 2024 at
Fort Lauderdale, Broward County, Florida.



Lois L. McInnis-Kelleher

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

Case No.: CACE-24-005922

Division: Civil

**JACK A BUTLER, an individual,
Plaintiff,**

vs.

**BROWARD COUNTY BOARD
OF RULES AND APPEALS,
Defendant.**

NOTICE OF VOLUNTARY DISMISSAL

Comes now Plaintiff, **JACK A BUTLER**, who hereby files his Voluntary Dismissal against Defendant, **BROWARD COUNTY BOARD OF RULES AND APPEALS** in the above-titled matter pursuant to Rule 1.420(a)(1)(A), Florida Rules of Civil Procedure.

Respectfully submitted this 16th Day of March, 2025.

/s/ JACK A BUTLER
Plaintiff, *pro se*
301 Avalon Road
Winter Garden, FL 34787
(407) 717-0247



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed on March 16, 2025, 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 Defendant's attorney of record, Mr. Charles M Kramer, Managing Partner, Construction Law Group of Florida, PLLC, General Counsel to the Broward County Board of Rules and Appeals, 2900 North University Drive, Suite 36, Coral Springs, FL 33065, (954) 340-5955,

/s/ JACK A BUTLER

PLAINTIFF *PRO SE*

301 Avalon Road

Winter Garden, Florida 34787

407-717-0247



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



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. 4th 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. 4th 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/CaseDetail.aspx?CaseID=24005922>

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 BOFLA 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

Court 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 Motion 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.

Height 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 Broward County, Florida, 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 Chapter 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)(b), 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): Repeat 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. The form SHALL be filled out in its entirety. 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

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

The Court stated further:

Page 4

14 THE COURT: -- at this point, what I'm
15 going to do is grant the motion to dismiss for
16 failure to state a claim on the dec count. The
17 injunctive count, obviously, is dependent upon
18 the existence of the dec count. It would fail
19 for the same -- for that same reason.
20 And I'll afford Mr. Butler -- I think I'll
21 give him a chance to -- to amend and see if he
22 can find something else out there.
23 MR. KRAMER: Thank you, Your Honor.
24 THE COURT: To the extent there's -- you
25 know, nobody really talked about it, but

Page 5

1 Mr. Kramer's argument is that, you know,
2 exhaustion wasn't done here. Part of
3 Mr. Butler's response is, well, that would have
4 been a waste of time. I don't -- you know,
5 words to that effect. That's not what he
6 said --
7 MR. KRAMER: Exactly.
8 THE COURT: -- obviously, but it sounded
9 like a futility argument.
10 I don't know if there's exceptions to the
11 exhaustion requirement. I haven't done that
12 research lately. But I would think that if
13 you're contending that exhaustion is futile or

14 words to that effect, I think you've got to
 15 plead around that, in all honesty.
 16 So, at this point in time, that will be
 17 the ruling. I'll grant the motion to dismiss.
 18 **Mr. Butler, how long would you need to**
 19 **file an amended complaint, if you so choose?**
 20 **MR. BUTLER:** Thirty days will be plenty of
 21 time.
 22 THE COURT: Okay. Thirty days will be it.
 23 And, Mr. Kramer, would you be kind enough,
 24 as the prevailing party, to send me an order
 25 that grants the motion to dismiss for the
 Page 6
 1 reasons stated on the record and affords
 2 Mr. Butler 30 days to file an amended
 3 complaint?
 4 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 Buder's Complaint was dismissed based on: 1) failure to obtain an adverse decision by a Building 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. Panta 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. 4th 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. 4th 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 2000-141 and 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.

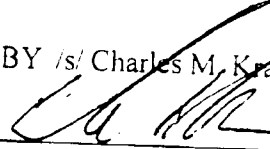
None of the supplemental documentation referenced above has any effect on Petitioner's lack of standing and BORA cannot create standing where none exists.

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.

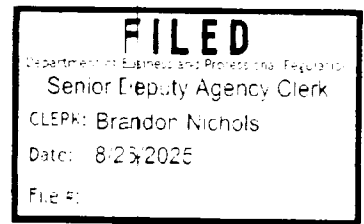
CONCLUSION

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. 4th 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 DCA 2020); *Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach*, 792 So.2d 539 (Fla. 4th 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.



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tinat@ckramerlaw.com



**STATE OF FLORIDA
BUILDING COMMISSION**

**PETITION FOR HEARING BEFORE THE
FLORIDA BUILDING COMMISSION**

JACK A. BUTLER,

Petitioner,

v.

BROWARD COUNTY BOARD
OF RULES AND APPEALS,

Respondent.

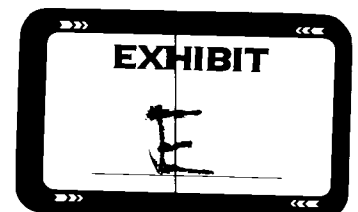
ORDER DENYING PETITION FOR HEARING

The Petition for Hearing Before the Florida Building Commission by Petitioner, Jack A. Butler, came for consideration before the Florida Building Commission (Commission) at its meeting on August 12, 2025. Based on the statements in the petition, the material subsequently submitted, and the response by the Broward County Board of Rules and Appeals (BORA), the Commission states the following:

1. Petitioner states that he is a Florida-certified residential contractor and an unregistered residential building designer practicing in the State of Florida under a statutory exemption from registration as an architect.

2. Petitioner challenges a number of local amendments to the Florida Building Code promulgated by, or within, Broward County. While there are many issues that Petitioner raises throughout his petition, he organizes them into three main claims, which can be summarized as follows:

Claim 1 challenges BORA's authority to adopt any local amendments at all.



Claim 2 asserts that the local amendments violate various provisions of state licensing law.

Claim 3 alleges that BORA failed to comply with the statutory processes required to adopt its local amendments.

3. Petitioner states that he attempted to challenge the local amendments via the process for doing so prescribed by section 553.73(4)(f), Florida Statutes (2025), but was denied a hearing or an order on the grounds of lack of standing.

4. Section 553.74(4), Florida Statutes (2025), provides a mechanism for local governments to adopt local amendments to the administrative and technical portions of the Florida Building Code. The same section provides a mechanism for substantially affected parties to challenge those amendments.

5. Section 553.73(4)(f), Florida Statutes (2025), provides that “[e]ach 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.”

6. Section 553.73(4)(g), Florida Statutes (2025), goes on to state that

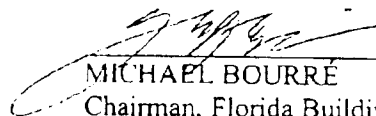
If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board’s written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division’s website for the assignment of an administrative law judge.

7. Petitioner alleges simultaneously that Broward County has no compliance review board, and that BORA impermissibly serves as the compliance review board while also promulgating local amendments upon which it may be required to render a determination. Petitioner asserts that BORA's refusal to afford him a hearing or issue a determination regarding his challenge of the subject local amendments due to his alleged lack of standing should be treated as a ruling that the amendments comply with the requirements of section 553.73(4), Florida Statutes (2025).

8. Paragraph 553.73(4)(g), Florida Statutes (2025), clearly and explicitly provides that the *written determination of a compliance review board* regarding the compliance of local amendments with the provisions of subsection 553.73(4), Florida Statutes (2025), may be appealed to the Commission. There has been no such determination made in this instance, and the Commission declines to adopt Petitioner's theory that BORA's failure, to date, to conduct a hearing or issue a determination on the matter serves as the equivalent.

9. Accordingly, Petitioner's request for a hearing before the Commission is DENIED, and the Commission likewise declines to refer the case to the Division of Administrative Hearings.

DONE AND ORDERED this 15 day of August, 2025, in Fleming Island,
Clay County, State of Florida.


MICHAEL BOURRÉ
Chairman, Florida Building Commission

NOTICE OF RIGHT TO APPEAL

Petitioner and any substantially affected parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.