

BEFORE THE FLORIDA BUILDING COMMISSION
PETITION FOR DECLARATORY STATEMENT
Private Provider Plans Review After Construction Has Commenced

Petitioner, pursuant to sections 120.565 and 553.775, Florida Statutes, and Chapter 28-105, Florida Administrative Code, petitions the Florida Building Commission for a declaratory statement concerning the application of section 553.791, Florida Statutes, to Petitioner's particular circumstances.

I. PETITIONER

Petitioner: Michael Price
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DS 2026-070

Petitioner is the fee owner and/or permit holder of permitted single-family residential construction projects for which construction has already commenced.

II. STATUTORY PROVISIONS AT ISSUE

Petitioner requests a declaratory statement concerning the application of the current version of section 553.791, Florida Statutes, including subsection (1)(d), defining "building code inspection services"; subsection (1)(r), defining "single-trade inspection" and "single-trade plans review"; subsection (2)(a), concerning the election of a Private Provider for plans review or building code inspection services; subsection (6), concerning an election of a Private Provider after construction has commenced; and subsection (7), concerning Private Provider plans review and Plan Compliance Affidavits.

III. PARTICULAR CIRCUMSTANCES

Petitioner has permitted single-family residential construction projects for which construction has already commenced. Petitioner presently requires plans review of revised construction documents and wishes to retain a qualified Private Provider to perform that plans review.

The Private Provider would review the revised construction documents for compliance with the applicable codes and, upon determining that the plans comply, provide the Plan Compliance Affidavit required by section 553.791(7).

Section 553.791(1)(d) defines "building code inspection services" to include services involving the review of building plans, as well as inspections required during construction. Section 553.791(1)(r) separately defines a "single-trade inspection" or "single-trade plans review" as an inspection or plans review focused on a single construction trade.

Section 553.791(2)(a) provides that a fee owner or authorized contractor may choose "at any time" to use a Private Provider to provide plans review or building code inspection services. That subsection also provides that, if a Private Provider is used for plans review, the local Building Official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or contractor to also use a Private Provider for required building inspections.

Section 553.791(6) separately addresses an election made after construction has commenced and provides for the use of a Private Provider to provide inspection services for a single-trade inspection for a single-family or two-family dwelling.

Petitioner is subject to a local Private Provider policy under which use of a Private Provider for plans review requires use of a Private Provider for required building inspections. Because construction has already commenced, Petitioner must determine how these provisions apply together before electing a Private Provider to perform the presently required plans review.

Petitioner is not asking the Commission to determine whether the local policy was lawfully adopted or to determine whether any past action of the local Building Official was lawful. Petitioner seeks an interpretation of section 553.791 as it applies to Petitioner's present decision whether and how he may elect a Private Provider for plans review after construction has commenced.

IV. QUESTIONS PRESENTED

1. Under Petitioner's present circumstances, where construction has already commenced on permitted single-family residential projects and Petitioner presently requires plans review of revised construction documents, may Petitioner elect a qualified Private Provider under section 553.791 to perform that plans review and provide the Plan Compliance Affidavit required by subsection (7)?

2. If the answer to Question 1 is yes, and the local enforcement agency has a policy pursuant to section 553.791(2)(a) requiring a fee owner or contractor who uses a Private Provider for plans review to also use a Private Provider for required building inspections, how does that requirement apply to Petitioner when construction has already commenced and subsection (6) separately addresses the election of a Private Provider for inspection services after commencement of construction?

V. MANNER IN WHICH THE STATUTE SUBSTANTIALLY AFFECTS PETITIONER

The requested interpretation substantially affects Petitioner because construction has already commenced on Petitioner's permitted single-family residential projects, revised construction documents presently require plans review, and Petitioner wishes to elect a qualified Private Provider to perform that review.

Petitioner must determine whether section 553.791 permits him to make that election after construction has commenced and, if so, how the local requirement concerning Private Provider inspections applies under these circumstances. The answer will determine the Private Provider services Petitioner may retain and the course Petitioner may follow in submitting the revised construction documents.

The requested interpretation concerns Petitioner's present rights, obligations, and future course of conduct under section 553.791. Petitioner does not request a determination that the local Building Official committed a past violation or a determination imposing liability or discipline upon any person.

VI. DECLARATION REQUESTED

Petitioner respectfully requests that the Florida Building Commission issue a declaratory statement determining the application of section 553.791, Florida Statutes, to Petitioner's present ability to elect a qualified Private Provider for plans review of revised construction documents after construction has commenced and, if such an election is permitted, the application of the local Private Provider inspection requirement under Petitioner's circumstances.

Respectfully submitted,

Michael Price

Date: _____