DS 2026-103 – Marie L. Hickey

Summary of Issue:

Petitioner is a resident and property owner within the municipal boundaries of the City of Debary, Florida, and asserts that her property interest and safety have been impacted by a permanent structure that was erected within the municipal boundaries approximately two years ago. Petitioner alleges that the structure was constructed without any formal, written building permit being issued, and without a certified land survey or engineering or safety specifications.

Petitioner's Question:

Petitioner presents the following question: does the Florida Building Code or section 553.79, Florida Statutes, grant any legal authority or discretion to a local building official, contracted building administrator, or local municipal administration to substitute a "verbal authorization" or "verbal okay" for standard written permitting, boundary survey, and professional engineering/structural specification requirements for a permanently erected structure?

Relevant Provisions:

Rule 28-105.001, 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." (emphasis provided)

Staff's Suggested Answer:

Pursuant to rule 28-105.001, F.A.C., "[a] declaratory statement is not the appropriate means for determining the conduct of another person." Furthermore, 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).

As Petitioner explicitly asks the Commission to opine on the past actions of other individuals, the Commission declines to answer the petition.