

**THE STATE OF NORTH CAROLINA  
BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL  
RALEIGH, NORTH CAROLINA**

**Docket No. 2015-05**

IN THE MATTER OF AN APPEAL BY )  
THE NORTH CAROLINA ASSOCIATION )  
OF ELECTRICAL CONTRACTORS, INC. )  
REGARDING THE 2011 NORTH CAROLINA )  
ELECTRICAL CODE AND DOCKING )  
FACILITIES FOR SINGLE-FAMILY )  
DWELLINGS )  
\_\_\_\_\_ )

**ORDER AND  
FINAL AGENCY DECISION**

THIS MATTER was heard on December 16, 2015 by the North Carolina Building Code Council (“Council”) in Raleigh, North Carolina on the timely appeal by Petitioner North Carolina Association of Electrical Contractors, Inc. (the “NCAEC”) from the August 19, 2015 Formal Interpretation (“Formal Interpretation”) and September 2, 2015 NCDOI Decision (“NCDOI Decision”) of Respondent North Carolina Department of Insurance (“NCDOI”).

The hearing was properly noticed, and a quorum of the members of the Council was present. The NCAEC was represented at the hearing by W. Austin Morris of Southern Pines, North Carolina. The NCDOI was represented at the hearing by Assistant Attorney General Robert D. Croom. The Council heard sworn testimony from NCAEC witnesses Doug Fulcher of Fulcher Electric Service and NCAEC Executive Director Terry Cromer and from NCDOI witness Ron Chilton, Chief Electrical Code Consultant with the Office of the State Fire Marshall.

Based on the competent evidence in the record, the arguments of the parties and the record as a whole, the Council makes the following:

## FINDINGS OF FACT

### **Regulatory Overview**

1. This dispute principally concerns the interplay, if any, of Articles 555 and 682 of the 2011 North Carolina Electrical Code (“Electrical Code”) with regard to the electrical wiring and equipment requirements in and for a private, non-commercial docking facility constructed or occupied for the use of the owner or residents of an associated single-family dwelling (a “Single-Family Boat Dock”).

2. The Chapters of the Electrical Code are organized from the general to the specific. Particularly, Chapters 1 through 4 of the Electrical Code are general in nature, covering general definitions and rules for installations, circuits and circuit protection, general methods and materials for wiring and general-purpose electrical equipment. Chapters 5 through 7 of the Electrical Code, however, deal with special requirements that may supplement or modify the general rules of the Code’s first four chapters.

3. Chapter 5 of the Electrical Code addresses special occupancies. Article 555 under Chapter 5 is entitled “Marinas and Boatyards.” Article 555.1 defines the scope of Article 555 and states:

This article covers the installation of wiring and equipment in the areas comprising fixed or floating piers, wharves, docks, and other areas in marinas, boatyards, boat basins, boathouses, yacht clubs, boat condominiums, docking facilities associated with residential condominiums, any multiple docking facility, or similar occupancies, and facilities that are used, or intended for use, for the purpose of repair, berthing, launching, storage, or fueling of small craft and the moorage of floating buildings.

Private, non-commercial docking facilities constructed or occupied for the use of the owner or residents of the associated single-family dwelling are not covered by this article.

(Emphasis added). Read together, the plain language of the two paragraphs of Article 555.1 exempts the installation of wiring and equipment in the area comprising a Single-Family Boat Dock.

4. Article 555.13(B) contains specific wiring and equipment installation requirements for those special occupancies subject to Article 555.

5. Chapter 6 of the Electrical Code addresses special equipment.

6. Article 680 under Chapter 6 is entitled “Swimming Pools, Fountains, and Similar Installations.” Article 680.1 states in relevant that Article 680 applies to “the construction and installation of electrical wiring for, and equipment in or adjacent to” the specific “bodies of water” of “all swimming, wading, therapeutic and decorative pools; fountains; hot tubs; spas; and hydromassage bathtubs, whether permanently installed or storable.”

7. Article 682 under Chapter 6 is entitled “Natural and Artificially Made Bodies of Water.” Article 682.1 defines the scope of Article 682 and states:

This article applies to the installation of electrical wiring for, and equipment in and adjacent to, natural or artificially made bodies of water not covered by other articles in this Code, such as but not limited to aeration ponds, fish farm ponds, storm retention basins, treatment ponds, irrigation (channels) facilities. Water depths may vary seasonally or be controlled.

(Emphasis added).

8. Article 682.2 defines “artificially made bodies of water” in relevant part as “[b]odies of water that have been constructed or modified to fit some decorative or commercial purpose such as, but not limited to, aeration ponds, fish farm ponds, storm retention basins, treatment ponds” and “irrigation (channel) facilities.”

9. Articles 682.2 also defines “natural bodies of water” as “[b]odies of water such as lakes, streams, ponds, rivers, and other naturally occurring bodies of water, which may vary in depth throughout the year.”

10. In turn, Article 682.3, entitled “Other Articles,” states:

If the water is subject to boat traffic, the wiring shall comply with 555.13(B).

(Emphasis added).

11. As noted, Article 682’s special installation requirements are only applicable to wiring for and equipment in and adjacent to “bodies of water not covered by other articles in this Code.” See Article 682.1 (emphasis added). Besides Articles 680 and 682, however, there are no other provisions of the Electrical Code that expressly “cover” (or, for that matter, exempt from “coverage”) specific types of bodies of water or that condition the applicability of their requirements on specific types of bodies of water. Instead, other than in Articles 680 and 682, the Electrical Code contains only (a) general requirements for installing wiring or equipment whether or not in or near water, (b) general requirements for installing wiring or equipment in or near water generally but without regard to the specific type of body of water and (3) special requirements for installing wiring or equipment in specific areas or structures located in or near water, such as under Article 555.1.

### **Procedural Background**

12. In a letter dated August 10, 2015, Mr. Cromer, on behalf of the NCAEC, requested that the NCDOI issue a formal interpretation regarding whether Articles 210 (containing the general requirements for branch circuits under Chapter 2 of the Electrical Code), 555 and/or 682 of the Electrical Code applied to the installation of electrical wiring and equipment in and for Single-Family Boat Docks.

13. In response to Mr. Cromer's letter, the NCDOI issued the Formal Interpretation, which stated in relevant part:

*What Article of the NC Electrical Code applies to a single family boat dock on a private lake or pond that is not shared by other docks?*

If the dock is at a private pond or lake, not subject to other boating traffic, and is not leased or shared by other than one single family residence, then Article 682 applies solely. Article 682 applies to this scenario.

*What Article of the NC Electrical Code applies to a single family boat dock on a water way that is either navigable or shared by other docks?*

If an Article 682 application, in other words not commercial, yet on 'navigable waters', the wiring methods must meet Article 555 no matter if on private property and used only by the owner.

Article 682.3 states: If the water is subject to boat traffic, the wiring shall comply with 555.13(B).

Article 555.1 Scope, first paragraph in part states: This article covers the installation of wiring and equipment in the areas comprising fixed or floating piers . . . in . . . docking facilities associated with boat condominiums, any multiple docking facility, or similar occupancies . . . Article 555 applies to a private lake or pond with multiple or shared docks.

Article 555.1, second paragraph states: Private, noncommercial docking facilities constructed or occupied for the use of the owner or residents of the associated single-family dwelling are not covered by this article. "The owner" and "the associated single-family dwelling" means a single, unshared dock on the waterway.

*Do Articles 210.8(A)(3), 210.8(A)(8), and 210.8(C) apply to a single family boat dock on a private lake or pond that is not shared by other docks?*

These GFCI requirements apply in addition to the requirements in Article 682. The wiring methods in Article 555 apply where there is boat traffic.

(Emphasis in original).

14. The NCAEC requested an appeal of the Formal Interpretation. In response, the NCDOI issued the NCDOI Decision, which affirmed the Formal Interpretation and stated in relevant part:

- (1.) The exemption in Article 555 addressing all single family dwellings is a general provision in the code where reference to Section 555.13(B) from Section 682.3 is a specific provision.
- (2.) The wiring method prescribed in 682.3, referencing back to 555.13(B), applies to buildings not covered by any other article.

15. On September 18, 2015, the NCAEC timely appealed the NCDOI's Formal Interpretation and the NCDOI Decision to the Council pursuant to N.C. Gen. Stat. §§ 143-140 and 143-141 and Section 202.9.2 of the 2012 N.C. Building Code: Administrative Code and Policies.

Based on the foregoing Findings of Fact, the Council makes the following:

### **CONCLUSIONS OF LAW**

1. The essence of the NCDOI's opinion in the Formal Interpretation and NCDOI Opinion is that, by operation of law, Article 682 overwhelmingly restricts the otherwise categorical exemption from Article 555 for Single-Family Boat Docks. To arrive at its opinion, the NCDOI first interprets the exemption in Article 555.1 as necessarily in conflict with Articles 682.1, 682.2 and 682.3 because: (a) Articles 682.1 through 682.3 purport to apply to all electrical wiring for and equipment in all natural and artificially made bodies of water except for those bodies of water not subject to boat traffic (and, presumably, except for those bodies of water subject to Article 680.1, such as swimming pools and fountains); and because (b) the wiring for and equipment used in Single-Family Boat Docks under Article 555.1, by their very nature, are located either adjacent to or in those natural or artificial bodies of water defined by Article 682.2.

2. The NCDOI resolves the conflict it perceives in Articles 682 and 555 by giving Article 682.3 priority over Article 555.1 because: (1) Article 682 was adopted by the Council later in time than Article 555; and (2) Article 682.3 is allegedly more specific in nature than the exemption in Article 555.1. Finally, the NCDOI attempts to give the Single-Family Boat Dock

exemption in Article 555.1 some limited effect by finding the Article would still exempt a Single-Family Boat Dock but only so long as the dock is located on a body of water not subject to any boat traffic – whether actual or, apparently, potential boat traffic – other than boat traffic by the owner and residents of the dwelling associated with the dock. For the reasons below, however, the Council concludes that Article 682 does not affect the exemption for Single-Family Boat Docks in Article 555.1, including by requiring them to be wired in accordance with Article 555.13(B).

3. Regarding whether Articles 555.1, 681.1, 681.2 and 682.3 are in conflict:

It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special. . . . ‘And the reason is’ . . . ‘that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.’

. . . ‘Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision . . . .

*State v. Gettys*, 181 N.C. 580, 581-83, 107 S.E. 307, 307-08 (1921) (emphasis added) (citations omitted); *see also Seders v. Powell*, 298 N.C. 453, 459, 259 S.E.2d 544, 549 (1979) (“When two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature, even if the general statute is more recent, unless it clearly appears that the legislature intended the general statute to control.”). For the purposes of

the canons of statutory construction in this case, the Council is the equivalent of the legislature because it is the Council that adopts the Electrical Code.

4. Applying the rules stated in *Gettys* here, Article 682 contains no “special mention” or express repeal of the Single-Family Boat Dock exemption from Article 555 that the Council previously adopted. Nor did the NCDOI present any competent evidence that the Council actually intended to repeal the Single-Family Boat Dock exemption when it later adopted Article 682.

5. Additionally, Article 555.1 is a special provision, whereas Article 682 contains far more general provisions. Article 682 purports to apply to general methods for all wiring and equipment adjacent to or in a nearly limitless number of bodies of water. In marked contrast, Article 555.1 contains a highly limited special exemption for wiring and equipment in the area of exactly one type of structure (or “special occupancy”) located in water – the Single-Family Boat Dock.

6. The NCDOI suggests in the NCDOI Opinion that, because Article 682.3 is limited to those bodies of water not subject to “boat traffic,” Article 682.3 is actually a more special provision than the Single-Family Boat Dock exemption of Article 555.1. First, this argument is unconvincing because it attempts to segregate Article 682.3 from the broad subject matter of Article 682 generally. Second, the NCDOI’s definition of “boat traffic” is so broad that it would still render Article 682.3 a more general provision than the exemption in 555.1.

7. The NCDOI’s interpretation of “boat traffic” in its Formal Interpretation and NCDOI Opinion would make Article 682.3 apply to every body of water (other than swimming pools, fountains and similar bodies of water under Article 680) in which anybody other than the owner of the dwelling associated with a Single-Family Boat Dock and his or her guests ever used



or could conceivably use a boat. Moreover, the source that the NCDOI cited at trial as support for its interpretation of “boat traffic” belies even the minimal effect the NCDOI Formal Interpretation and NCDOI Opinion would afford the exemption in Article 555.1. Specifically, the NCDOI at trial referred the Council to a dictionary definition of “traffic” that, in pertinent part, defines traffic as the “[p]assage of persons, vehicle, or messages through transportation routes,” “[d]ealings between groups or individuals” and “[t]o travel over <roads that are heavily trafficked> .” These definitions of “traffic” would actually include the use of boats in a body of water by the owner of the dwelling associated with a Single-Family Boat Dock and his or her guests, thus negating Article 555.1’s exemption in its entirety.

8. In finding that the exemption in Article 555.1 necessarily conflicts with and yields to Articles 682.1, 682.2 and 682.3, the NCDOI misapplied the applicable rules of statutory construction. Here, Article 555.1 “certainly includes the matter in question” by exempting Single-Family Boat Docks from all of Article 555’s requirements, whereas Articles 682.1, 682.2 and 682.3, only if “standing alone,” would subject Single-Family Boat Docks to Article 555.13(B). *See Gettys*, 181 N.C. at 581-83, 107 S.E. at 307-08. Absent any express repeal of the exemption in Article 555.1 and any evidence that the Council intended to repeal the exemption, the Single-Family Boat Dock exemption “is to be considered as remaining an exception” to the requirements of Article 682. *See id.*

9. In this Judgment, the Council makes no finding or conclusion regarding the effect or lack of effect of Article 682 on any exemptions in the Electrical Code other than the exemption in Article 555.1. Additionally, the Council makes no finding or conclusion regarding what electrical wiring or equipment may be “for,” “in” or “adjacent to” natural or artificially made bodies of water under Article 682.1. Finally, other than by discussing the Department’s

definition of “boat traffic” above, the Council makes no finding or conclusion regarding the meaning of “boat traffic” under Article 682.3.

10. The Council also notes that, although Single-Family Boat Docks are not subject to the requirements of Article 555, there are numerous other provisions in the Electrical Code that provide for the safe installation of wiring and equipment in Single-Family Boat Docks. Among those provisions are Article 110.12 (applying to the mechanical execution of the electrical work on such docks), Article 110.26(E)(2) (containing requirements for outdoor installations that would be applicable to such docks), Article 210.1 (containing requirements for branch circuits, other than a circuit requiring single motor loads, that would be applicable to such docks), Article 210.8(A)(3) (containing requirements for outside electrical components that would be applicable to such docks), Article 210.8(A)(8) (applying to the wiring and equipment in such docks), Article 210.8(C) (applying to the wiring for any boat hoists or lifts in such docks), Article 240.4 (containing requirements for the protection of conductors that are applicable for such docks), Article 250.4 (containing general requirements for grounding and bonding applicable to such docks), Article 300.9 (containing requirements for above-grade electrical raceways in wet locations), Article 310.15 (containing ampacity requirements for certain conductors that may be used in such docks) and Article 340.80 (containing other ampacity requirements that are applicable to such docks).

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law:

1. The NCDOI’s August 19, 2015 Formal Interpretation is REVERSED;
2. The NCDOI’s September 2, 2015 NCDOI Decision is REVERSED;

3. Installations of electrical wiring and equipment in or for private, non-commercial docking facilities constructed or occupied for the use of the owner or residents of an associated single-family dwelling are entirely exempt from Article 555 of the 2011 North Carolina Electrical Code, and Article 682 of the same code does not apply to such installations.

4. The Council instructs the NCDOT to transmit a copy of this Order immediately upon its issuance to the Chief Building Inspectors for the Town of Emerald Isle, the City of Morehead, the Town of Atlantic Beach and any other North Carolina local government units that the NCDOT is aware of having required installations of electrical wiring and equipment in or for private, non-commercial docking facilities constructed or occupied for the use of the owner or residents of an associated single-family dwelling to comply with Article 682.

5. Additionally, the Council instructs the NCDOT to post this Order prominently on its website(s) within 10 days by following the standards of 2015 N.C. Sess. Law 145 (effective October 1, 2015), which reads in pertinent part:

SECTION 6.1. G.S. 143-141 is amended by adding a new subsection to read:

(c1) Posting on Department Web Site. – The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council all appeal decisions, interpretations, and variations of the Code issued by the Council within 10 business days of issuance.

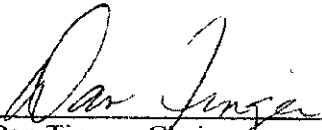
SECTION 6.2. G.S. 143-138.1(b) reads as rewritten:

(b) The Department of Insurance shall post and maintain on its Web site that portion of its Web site devoted to the Building Code Council written commentaries and written interpretations made and given by staff to the Council and the Department for each section of the North Carolina Building Code within 10 business days of issuance.

6. Finally, the Council instructs the NCDOT to remove any interpretations underlying this appeal from its website(s) within 10 days.

SO ORDERED, this the 15<sup>th</sup> day of March, 2016.

The North Carolina Building Code Council

  
By: Dan Tingen, Chairman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing document upon counsel for Petitioner via certified mail, return receipt requested, addressed as follows:

Austin Morris  
Sandhills Law Group  
135 E. Pennsylvania Avenue  
Southern Pines, NC 28387

I HEREBY CERTIFY that I have this day served the foregoing document upon counsel for Respondent via State interoffice mail, addressed as follows:

Robert D. Croom  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

This 21<sup>st</sup> day of March, 2016.

ROY COOPER  
ATTORNEY GENERAL



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