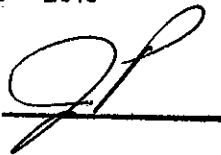




REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

AUG 2 2010

Docketed by 

In The Matter Of:

CITY OF DEERFIELD BEACH
FIRE AND RESCUE,

Case No.: 111269-10-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter "Petition") by the City of Deerfield Beach Fire and Rescue (hereinafter "Petitioner"). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on June 28, 2010. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.

2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as

legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. The Declaratory Statement was requested pursuant to the provisions of Section 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's interpretation of its statutes, rules, and orders, as they apply to the Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the Department to issue a Declaratory Statement when requested by a substantially affected person and the Petition relates to the Florida Fire Prevention and Life Safety Code (hereinafter referred to as "the Code").

5. The subject of the Petition is the application of National Fire Protection Association (hereinafter "NFPA") Standard 101-9.6.2.3 to the Petitioner's particular set of circumstances.

6. Petitioner alleges the following:

A. Petitioner is the authority having jurisdiction ("AHJ") over the property located in Century Village, Prescott C, Deerfield Beach, Florida.

B. A fire alarm contractor was engaged to install a manual fire alarm system in the subject property, an existing apartment building more than three stories in height or more than 11 dwelling units per building. A permit was issued, and installation of the manual fire alarm system proceeded. A combination smoke/heat detector device was also installed in each individual dwelling unit.

C. When the installation was complete, and the contractor called for the necessary building and fire department inspections, Petitioner discovered that the ground floor manual fire alarm pull boxes were installed in a location outside of the natural exit access path of the required exit.

D. Petitioner directed the contractor to relocate the boxes in accordance with NFPA 101-9.6.2.3; however, the contractor disagreed and appealed Petitioner's decision. The Broward County Board of Rules and Appeals overturned Petitioner's decision, apparently concluding that the installation of the smoke/heat detection device was equivalent to the requirements of NFPA 101-9.6.2.3.

E. Pictures of the exterior exit involved in this particular instance are included with the Petition, and made a part of this Declaratory Statement as Attachment A.

7. No litigation is currently pending on this matter.

8. Receipt of the Petition herein was published in Volume 36, Number 28 of the *Florida Administrative Weekly*, on July 16, 2010.

QUESTIONS

9. A. Does NFPA 101-9.6.2.3 require a manual fire alarm pull station to be located in the natural exit egress path away from the building?

B. If yes, does the Petitioner, as the authority having jurisdiction, have the authority to determine the natural exit egress path away from the building?

C. Does the City Building Electrical Inspector have the authority to certify the proper location of a manual fire alarm pull box?

D. Did the Broward County Board of Rules and Appeals err in allowing the City Building Electrical Inspector to determine the proper location of a manual fire alarm pull box, in contravention of the determination of the AHJ?

E. Does the Broward County Board of Rules and Appeals have the authority to accept an equivalency, alternative or modification to NFPA 101-9.6.2.3?

DISCUSSION

10. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements when requested by a substantially affected person regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances. The Department is required to issue a declaratory statement when requested by an AHJ and the request involves the application of the Code to the Petitioner's particular set of circumstances.¹

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and to update it every three years. NFPA 1, "Uniform Fire Code, Florida Edition" and NFPA 101, "Life Safety Code, Florida Edition," are adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special district having firesafety responsibilities, and is enforceable by the local government.

12. The Department adopted the 2006 edition of NFPA 101 by rule effective December 31, 2008; Section 9.6 thereof applies to fire detection, alarm, and communications systems and Section 9.6.2 relates to the manner in which the fire alarm is initiated to alert occupants of fire or other emergencies. NFPA 101-9.6.2.3 provides, "A manual fire alarm box shall be provided in the natural exit access path near each required exit from an area, unless modified by another section of this Code." The phrase 'natural exit access path near each required exit *from an area*' has broader application than Petitioner's question as more than one manual pull box may be required depending, among other things, on whether a fully monitored sprinkler system has been installed, and the distance from the apartment unit exit to an exterior exit, and the floor on which the unit is located. As the notes to 101-9.6, et al explain, "[T]he provisions of Section 9.6 cover the basic functions of a complete fire alarm system, including fire detection, alarm, and

¹ Section 633.01(6), *Florida Statutes*.

communications. These systems are primarily intended to provide the indication and warning of abnormal conditions, the summoning of appropriate aid, and the control of occupancy facilities to enhance protection of life.” The manual pull stations are one piece of a complete system of fire protection. The manual pull box requirements for fully sprinklered occupancies have a different function than the requirements for nonsprinklered occupancies.²

13. Limiting this discussion to the particular alarm box at issue as delineated by the support pictures, the design of the egress arrangement involves two different required exits. The first is the required exit from the residential living unit which must meet the requirements of NFPA 101-7, as required by NFPA 101-31. The two open air stairways are the second required exit from the floor or floors above the level of exit discharge. These two stairways discharge at grade; however, the exterior walkway adjacent to the building is confined by vegetation. This vegetation directs the occupants to a single exterior walkway extending from the approximate center of the building to a public way. The walkway surfaces available at grade would permit direct access to a public way through many undefined paths if the vegetation was not in place to limit such movements. The vegetation should not be treated as a permanent barrier since it could be removed at any time. Therefore, the most appropriate location of the manual fire alarm pull boxes is between the point where the stair ends at grade and the point where the walkway extends away from the building. The exact location along this undefined path is subject to review and approval of the AHJ.

14. Section 553.73 (10)(a), *Florida Statutes*, provides a process for resolving disputes between the building code enforcement official and the local fire code enforcement official, and the conflict must be resolved by applying the code requirement which offers the greatest degree

² NFPA 101-A.9.6.1 – A.9.7.6.

of lifesafety or alternatives which would provide an equivalent degree of lifesafety. If the local building official and the local fire official are unable to agree on a resolution of the conflict, the local board must resolve the conflict in favor of the code that offers the greatest degree of lifesafety or alternative which provides an equivalent degree of lifesafety and method of construction. All decisions of the local board are subject to review by the Joint Committee of the Florida Building Commission and the Florida Fire Advisory Council. If the Joint Committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to the provisions of paragraph (1)(d), which provides:

Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. 633.022 and 633.025 shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. The answers to Petitioner's questions are as follows:

A. Does NFPA 101-9.6.2.3 require a manual fire alarm pull station to be located in the natural exit egress path away from the building?

Answer: Yes.

B. If yes, does the Petitioner, as the AHJ, have the authority to determine the natural exit egress path away from the building?

Answer: Yes, but in the event of a conflict with the building official's interpretation of the placement of the fire alarm pull box, the fire AHJ must work with the building inspector to resolve the conflict.

C. Does the City Building Electrical Inspector have the authority to certify the proper location of a manual fire alarm pull box?

Answer: Yes, however, in the event of a conflict with the fire official's interpretation of the placement of the fire alarm pull box, the fire official must work with the building inspector to resolve the conflict.

D. Did the Broward County Board of Rules and Appeals err in allowing the City Building Electrical Inspector to determine the proper location of a manual fire alarm pull box, in contravention of the determination of the AHJ?

Answer: The Department cannot answer because the question involves a local procedural question that is not subject to the Department's review in a declaratory statement.

E. Does the Broward County Board of Rules and Appeals have the authority to accept an equivalency, alternative or modification to NFPA 101-9.6.2.3?

Answer: The Department cannot answer this question because the duties, authorities, and responsibilities of the Broward County Board of Rules and Appeals are governed by its implementing statutes and ordinances.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section

120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this 2 day of August, 2010.





Brian London
Deputy Chief Financial Officer

Copies furnished to:

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