



In The Matter Of:

EAGLE AVIATION, LLC.

Case No.: 92999-07-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter “Petition”) filed by Eagle Aviation, LLC., (hereinafter “Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on November 9, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition, and the statements and assurances made at the public hearing. 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.

2. 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

3. Petitioner is constructing four buildings to be used as hangars, located on the east side of Westside Road (a/k/a Hangar Road), Craig Air Field, Jacksonville, Florida.

4. The Petition was filed pursuant to the authority of Section 120.565, *Florida Statutes*, and Rules 28.105 and 69A-69.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision to the Petitioner's particular set of circumstances.

5. The subject of the Petition is National Fire Prevention Association (hereinafter "NFPA") 409, Chapters 3 and 8, adopted by reference in Rule 69A-60.005, *Florida Administrative Code*. The issue was the subject of a decision by the authority having jurisdiction; the resulting appeal was denied.

6. Petitioner alleges as fact that:

A. The project consists of four aircraft hangars to be constructed as Craig Airfield. Three of the aircraft hangars are row hangars: Building 1 has ten – 40' x 40' hangars totaling 16, 040 S.F. Building 2 has eight – 40' x 40' hangars totaling 36,000 S.F., and Building 3 has seven – 60' x 60' hangars totaling 25,758 S.F. The fourth hangar is 100' x 150' (15,000 S.F.) to house multiple aircraft.

B. All of the above-referenced hangars will be used for aircraft storage only; there will be no hazardous operations conducted in the hangars.

C. The largest building (Building 2) is 36,000 S.F. of building area and is divided into sixteen aircraft storage units.

D. Buildings 1, 2, and 3 are Group III, Type II (000) construction.

E. Aircraft storage units in Building 2 are either 2,000 S.F. or 2,500 S.F. and are separated by a wall that is the same fire rating as the exterior walls or roof, whichever is greater.

F. The entire front of each unit will be an electric vertical bifold door.

G. Two-hour fire rated walls will be constructed between selected aircraft storage units as necessary to sub-divide the hangar building into fire areas smaller than the maximum fire areas of 12,000 S.F. allowed for Group III, Type II (000) construction in Table 4.1.3.

H. The local Fire Marshal interprets the allowable building area and fire area to be one and the same.

7. Petitioner argues that:

A. Aircraft hangars are low-hazard storage, Group S-2 occupancies according to The Florida Building Code (Section 311.3).

B. Building area is defined in Chapter 5 of The Florida Building Code as “[t]he area included within surrounding exterior walls or exterior walls and fire walls. (Section 502-“Definitions”).

C. According to Table 503 in The Florida Building Code the allowable area for Construction Type II B is 26,000 S.F. and can be increased to 45,000 S.F. with area modifications appropriate to the site clearances.

D. NFPA 101 and NFPA 409 do not define the phrase “building area.”

E. NFPA 409 defines aircraft hangar as “a building or other structure inside any part of which aircraft are housed or stored, and in which aircraft might undergo service, repairs or alterations.”

F. NFPA 409 defines hangar fire area as “an area within an aircraft hangar subject to loss by a single fire because of lack of internal subdivisions as specified in Section 5.2 or 8.2 of this standard, as appropriate.”

G. Section 5.2 is not applicable because it concerns Group I and Group II aircraft hangars.

H. Buildings 1, 2, and 3 are Group III hangars, so Section 8.2 is applicable to this situation.

I. Group III aircraft hangars are defined in Section 4.1.3 as hangars with the following features:

(1) An aircraft access door height of 8.5 M. (28 ft.) or less.

(2) A single fire area that measures up to the maximum square footage permitted for specific types of construction in accordance with Table 4.1.3.

J. Table 4.1.3 allows a maximum of 12,000 S.F. for the fire areas of Group III, Type II (000) hangar construction.

K. Section 8.2.11 states that fire walls with a minimum 2-hour fire rating can be constructed to subdivide the hangar building into fire areas not exceeding the maximum areas specified in table 4.1.3 (12,000 S.F.)

L. The maximum fire area in Building 1 is 8,256 S.F., Building 2 is 9,105 S.F., and Building 3 is 11,040 S.F. All are under the allowable fire area limits of 12,000 S.F.

M. Section 8.2.2 states that “row hangars shall be divided by solid partitions of equivalent fire resistance to the exterior wall and roof or fire walls that define the fire areas.

N. Each aircraft storage space is subdivided by solid partitions of equivalent fire resistance to the exterior wall and roof or fire walls that define the fire areas.”

O. Response to elements of our argument is given in a 2001 Declaratory Statement (Case No. 43365-01-SP), In The Matter of Hernando County Airport Authority.

8. Notice of receipt of the Petition herein was published in Volume 33, Number 48 of the *Florida Administrative Weekly*, on November 30, 2007.

9. A public hearing was conducted on December 21, 2007 in Tampa, Florida. On the record of the public hearing, Petitioner withdrew questions A, E, and F., and modified and renumbers the remaining questions as follows:

QUESTIONS

10. The Petition poses the following questions related to NFPA 409:

A. Are the definitions of building area and fire area the same?

B. Can the building area of a Group III, Type II (000) aircraft hangar exceed the maximum single fire area indicated in Table 4.1.3?

C. Can two-hour fire walls be used to subdivide a Group III hangar building into fire areas?

DISCUSSION

11. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements 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 State Fire Marshal is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code, and the Petition is filed by a substantially affected person, or a local enforcement agency.

12. The Department adopted by reference NFPA 409 (2001 edition) entitled, “Standard on Aircraft Hangars” (referred to hereinafter as “NFPA 409), in Rule 69A-60.005, *Florida Administrative Code*. The purpose of the standard is to provide a reasonable degree of protection from fire for life and property in aircraft hangars, based on sound engineering principles, test data, and field experience.¹ Petitioner contends that it need not install sprinklers in its structures, the local authority having jurisdiction has concluded that sprinklers must be installed. The answer to this issue is determined by the meaning of the phrase “fire area.”

13. The term “aircraft hanger” is defined at NFPA 409-3.3.2 as a “building or other structure inside any part of which aircraft are housed or stored, and in which aircraft might undergo service, repairs, or alterations.” Aircraft hangars are classified into four groups. A Group III aircraft hanger is defined in NFPA 409-4.1.3 as having both of the following features:

- (1) An aircraft access door height of 8.5 m (28 ft.) or less;
- (2) A single fire area that measures up to the maximum square footage permitted for specific types of construction in accordance with Table 4.1.3.

Table 4.1.3. sets forth the maximum separation requirements for different types of construction and states that the maximum single fire area for Type II (000) is 12,000 square feet. Each of the buildings in question measures a total square footage greater than 12,000. Therefore, the meaning of the term “fire area” must be determined. NFPA 409-3.3.9 defines the term “hanger fire area” as an “area **within** an aircraft hangar subject to loss by a single fire because of lack of internal subdivisions as specified in Section 5.2 or Section 8.2 of this standard.” (Emphasis added.) In other words, whether a space within a structure qualifies as a “fire area” depends upon the degree of fire resistance used to separate it from the rest of the structure.

¹ NFPA 409-1.2

14. Petitioner's assertion of fact in paragraph 6.G. above makes clear that Petitioner intends to achieve compliance by constructing a separation in accordance with NFPA 409-8.2 so that no fire area exceeds 12,000 square feet. NFPA 409-8.2 provides that:

Where single hangar buildings adjoin each other and each has fire walls with a minimum rating of at least 2 hours, located so that fire areas shall not exceed the maximum area specified in table 4.1.3, no minimum separation shall be required and these buildings shall not be considered a hanger building cluster.²

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

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

2. Questions and Answers.

Question A. Are the definitions of building area and fire area the same?

Answer: No, the Department interprets its rule definition to be different from the definition of "building area" in Chapter 5 of the Florida Building Code, as set forth in Petitioner's argument at paragraph 7.B. above.

Question B. Can the building area of a Group III, Type II (000) aircraft hangar exceed the maximum single fire area indicated in Table 4.1.3?

Answer: Yes, if no single fire area exceeds the maximum indicated in Table 4.1.3.

Question C. Can two-hour fire walls be used to subdivide a Group III hangar building into fire areas?

² NFPA 409-8.3.1 requires Group III hangars of Type II (000) construction within a hangar cluster to be separated by a minimum of 50 feet.

Answer: Yes, if the fire walls meet the definition in NFPA 409-3.3.6.,³ and the two-hour rating required by NFPA 409-8.2.

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 the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, 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 _____ day of _____, 2008.

Eric W. Miller
Deputy Chief Financial Officer

³ A wall separating buildings or subdividing a building to prevent the spread of fire and having a fire resistance rating and structural stability .

Copies furnished to:

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