



**TOM GALLAGHER**  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

In re the Matter of

**FLORIDA MANUFACTURED  
HOUSING ASSOCIATION, INC.,**  
Petitioner.

Case No.: 83841-05-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 received on October 25, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from the Florida Manufactured Housing Association, Inc., hereinafter referred to as Petitioner. 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 for Declaratory Statement. 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

question is being answered purely as a hypothetical one. 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 for Declaratory Statement 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. Petitioner asserts that:

A. The Petitioner is the Florida Manufactured Housing Association (hereinafter FMHA), whose address is 2958 Wellington Circle North, Suite 100, Tallahassee, Florida 32309-6886, whose telephone number is 850-907-9111, and whose fax number is 850-907-9119.

B. FMHA is a state-wide association representing the manufactured housing industry. It is composed of six divisions representing different aspects of the industry. One division is the Filled Park Division, made up of owners and operators of mobile home parks as defined by subsections 723.003 (6) - (9), Florida Statutes. Another

division is the Developer Division, made up of owners of manufactured home communities that are being developed. All of the mobile home communities rent sites to individuals who own the mobile home that is placed on the site. Mobile homes are at times re-located and new homes are placed in existing communities. The relationship is one of landlord-tenant and the business of the mobile home community is the rental of the land that is developed for that purpose. Some of the FMHA communities have sections or phases that are completely built with additional sections still being developed and filled with homes. Some manufactured home community owners own multiple communities located in different Florida counties.

C. FMHA routinely advises its members concerning best practices for operating manufactured home communities and how various laws and regulations apply to community operations.

D. Section 633.022, Florida Statutes, provides uniform fire safety standards for mobile home parks. Section 633.022(2)(b), Florida Statutes, provides that a local authority may not require more stringent uniform fire safety standards with respect to buildings or structures subject to such standards except with regard to sprinkler systems in certain specified situations.

E. Rule 69A-42, Florida Administrative Code, provides for uniform fire safety requirements for mobile home parks. The Uniform Fire Safety Standards for Mobile Home Parks and Recreational Vehicle Parks<sup>1</sup> includes the NFPA 501A-2003.<sup>2</sup>

F. A substantial number of manufactured housing communities owned by FMHA members were permitted under previous uniform fire safety requirements. At the time of development and permitting, those communities were not required to install fire hydrants. At least 100 of those communities are now connected to municipal water supplies, but still do not have any fire hydrants and do not have the water lines required for the installation of fire hydrants. There are two different factual situations that must be addressed:

i. In one Florida county, there are at least three FMHA member communities that were built and permitted under a previous NFPA 501A code. At the time of permitting, the communities were not connected to municipal water supplies. Subsequently, the communities were connected to municipal water supplies but were not required to install fire hydrants. Are these communities required to install fire hydrants because they are now connected to municipal water supplies?

---

<sup>1</sup>The Uniform Fire Safety Standards for Mobile Home Parks and Recreational Vehicle Parks are defined and established in Chapter 69A-42, Florida Administrative Code, pursuant to section 633.022, Florida Statutes.

<sup>2</sup>NFPA 501A: Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities, adopted in Rule 69A-3.012, Florida Administrative Code.

ii. In another Florida county, there are at least five FMHA member communities that are connected to a regional water supply authority. The communities are still being developed. The initial phases of the developments were not required to install fire hydrants under the prior NFPA 501A code. As those communities develop additional phases, the local authorities require that the new phase developments have fire hydrants installed in accordance with the current code. In at least one of the communities, the local authority has stated that, due to the new phase development, the older initial phases are now required to install fire hydrants in accordance with the current code. The only reason stated has been that since fire hydrants are provided in the new phase development, the initial development is now required to install fire hydrants within 500 feet of the existing buildings. Is this a correct interpretation of 6.3.5.2.1 of the NFPA 501A-2003?

G. FMHA members are substantially affected by the requirements of the State Uniform Fire Safety Standards, specifically, the NFPA 501A-2003, which provide standards for manufactured home communities. The standards are implemented by local authorities, pursuant to section 633.022, Florida Statutes.

H. NFPA 501A-2003 Standard 6.3.5 states in pertinent part:

6.3.5.1 Water supplies for fire department operations without municipal water supply shall be in accordance with NFPA 1142, *Standard on Water Supplies for Suburban and Rural Fire Fighting*.

6.3.5.2.1 Where provided, hydrants shall be located along community streets or public ways within 152.4 m (500 ft) of all homes and buildings and installed in accordance with NFPA 24, *Standard for the Installation of Private Fire Service Mains and Their Appurtenances*.

Attached as Exhibit A.

I. Community owners seek to obtain an interpretation of the code that is consistent throughout the State. Community owners and developers need a consistent state-wide interpretation so that they may more efficiently and confidently operate in conformity with state standards.

J. Administrative rules operate prospectively with very few exceptions. Environmental Trust v. Dep't of Environmental Protection, 714 So. 2d 493 (1<sup>st</sup> DCA 1998). Established manufactured home communities met the codes and standards in effect at the time they were built. To now require compliance with the 500 foot rule for placement of fire hydrants would result in hardship. In some cases, the cost of retrofitting water systems, including digging up roads and laying new pipe to supply the hydrants, would be so costly as to endanger the economic viability of the community.

K. It is appropriate for the Fire Marshal to issue a declaratory statement clarifying the application of Standard NFPA 501A-2003 to Petitioner's members. A declaratory statement may address a matter of interest to more than one person. Chiles v. Dep't of State, 711 So. 2d 151 (Fla. 1<sup>st</sup> DCA 1998).

## REQUEST

5. In conclusion, Petitioner respectfully requests that the Division of State Fire Marshal issue a declaratory statement declaring that:

A. The application of Standard 6.3.5.2.1 of the NFPA 501A-2003 is prospective only;

B. In a phase development, the prospective application of Standard 6.3.5.2.1 of the NFPA 501A-2003 is limited solely to a phase that was undeveloped on the date of adoption of the standard by the Division of State Fire Marshal; and

C. Mobile home parks are governed by the uniform fire safety standards of which the State Fire Marshal is the final interpreting authority and, therefore, mobile home parks are not subject to more stringent fire safety standards of local governments with regard to the placement of fire hydrants.

#### DISCUSSION

6. The questions presented in the Petition for Declaratory Statement were in large part discussed and answered in the Declaratory Statement issued to *Silk Oak, LLC, Petitioner, Case No. 78581-04-FM*, and your attention is referred to that case which may be found at <http://www.fldfs.com/SFM/sfmdeclaratorystatement.htm>; however, they were not answered in the form requested in this Petition or for the particular set of circumstances set forth in this Petition.

7. Therefore, the requests herein will be restated in the form of questions and the responses will be stated as they pertain to the specific requests in this Petition.

#### DECLARATORY STATEMENT

For the reasons stated in *Silk Oak, LLC, Petitioner, Case No. 78581-04-FM*, it is the position of the State Fire Marshal in response to your questions that:

8.A. QUESTION: Is the application of Standard 6.3.5.2.1 of the NFPA 501A-2003 prospective only?

RESPONSE: Yes. All rules must operate prospectively only unless specific authority is provided in the statute providing rulemaking authority to operate retroactively.<sup>3</sup> Section 633.022, Florida Statutes, does not operate retroactively nor does it provide specific authority for Rule Chapter 69A-42, Florida Administrative Code, *Uniform Fire Safety Standards for Mobile Home Parks and Recreational Vehicle Parks*, to operate retroactively.

8.B. QUESTION: In a phase development, is the prospective application of Standard 6.3.5.2.1 of NFPA 501A-2003 limited solely to a phase that was undeveloped on the date of adoption of the standard by the Division of State Fire Marshal?

---

<sup>3</sup> See [Gulfstream Park v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation, 407 So. 2d 263 \(Fla. 3d DCA 1981\)](#). The federal courts also apply this principle. See [Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 109 S. Ct. 468, 102 L. Ed. 2d 493 \(1988\)](#) (a federal rule or regulation is retroactive only if the enabling legislation contains a valid grant of authority specifically allowing the agency to apply the rule retroactively).

RESPONSE: Yes, for the reasons stated in paragraph 8.A.

8.C. QUESTION: Are mobile home parks governed by the uniform fire safety standards of which the State Fire Marshal is the final interpreting authority and, therefore, mobile home parks are not subject to more stringent fire safety standards of local governments with regard to the placement of fire hydrants?

RESPONSE: Yes. See Section 633.022, Florida Statutes, and, in particular, paragraph (b) of subsection (2) thereof:

A local authority may not require more stringent uniform firesafety standards with respect to buildings or structures subject to such standards except as provided in paragraph (c) [not applicable here].

See also Section 633.01(4), Florida Statutes:

It is the intent of the Legislature that the rules promulgated by the State Fire Marshal pursuant to this section be enforced in such a manner as to prohibit the displacement of currently placed mobile homes unless there is a threat of imminent danger to the health, safety, or welfare of the general public.

#### 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 at Tallahassee, Leon County, Florida, this \_\_\_\_ day of

\_\_\_\_\_, 2005.

---

Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

David D. Eastman, Esquire  
Carol Grondzik, Esquire  
Laura L. Glenn, Esquire  
Lutz, Bobo, *et al*  
2155 Delta Boulevard, Suite 210-B  
Tallahassee, Florida 32303

Gabriel Mazzeo, Attorney  
Division of State Fire Marshal  
200 East Gaines Street  
Tallahassee, Florida 32399-0340