

In The Matter Of:

MITCHELL ELEMENTARY SCHOOL
FM

Case No.: 97588-08-

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 Glen Lathers, Fire Code Official, (hereinafter “Petitioner”), regarding Mitchell Elementary School. The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on or about September 3, 2008. 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 party 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. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

BACKGROUND AND FACTS ASSERTED

4. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, Chapter 28.105, and Rule 69A-60.007, *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 as it applies to the Petitioner's particular set of circumstances.

5. The subject of the Petition is the application of National Fire Prevention Association ("NFPA) 101-14.3.5 and 14.3.5.1.1 to the specific circumstances set forth in the Petition.

6. The Petition, as supplemented by the Petitioner, alleges the following facts:

A. Petitioner is an authority having jurisdiction over Mitchell Elementary School, located at 205 Bungalow Park, Tampa, Florida.

B. The building in question is a new building completed approximately one year ago on the campus of Mitchell Elementary School.

C. The building is larger than of 20,000 square feet gross.

7. Receipt of the Petition herein was published in Volume 34, Number 38 of the *Florida Administrative Weekly*, on September 19, 2008.

8. Petitioner filed substantially the same Petition with the Florida Building Commission, and waived the 90 day period within which the Department must enter this Declaratory Statement, to allow a hearing before the Building Commission.

QUESTIONS

9. The Petition poses the following questions:

A. Whether a four-hour fire wall can be installed in a building larger than 20,000 square feet gross thereby avoiding the sprinkler requirements of NFPA 101, requiring a

building of that size to be equipped with a supervised sprinkler system throughout, if approved by the AHJ.

B. If yes, would any penetrations be allowed in the four-hour fire wall; and would a parapet wall be required?

DISCUSSION

10. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue a Declaratory Statement 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. Section 633.01(6), *Florida Statutes*, requires the Department to issue a Declaratory Statement when requested by a substantially affected person, and the question relates to the Florida Fire Prevention Code. An authority having jurisdiction is a substantially affected person according to Rule 69A-60.007(5), *Florida Administrative Code*.

11. NFPA 101 (2003) was adopted as part of the Florida Fire Prevention Code in Rule 69A-3.012 and Chapter 60A-60, *Florida Administrative Code*.^[1]

12. Chapter 14 thereof relates to new educational occupancies, and section 14.3.5 relates to extinguishment requirements. NFPA 101-14.3.5.1.1 requires:

All educational buildings exceeding 20,000 square feet gross shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7.

13. As noted in the Petition, there is no exception to the foregoing requirement. The term “[b]uilding” is defined at NFPA 101-3.3.27 as “[a]ny structure used or intended for

^[1] NFPA 101-14.3.5.1.1 (2006), adopted by reference in the 2007 Florida Fire Prevention Code, effective 12/31/08, is unchanged from the 2003 edition.

supporting or sheltering any use or occupancy.” The explanatory material annexed at A.3.3.27 states that the term “*building* is to be understood as if followed by the words *or portions thereof*.”

14. The phrase “square feet gross” is not defined in NFPA 101, however, the phrase “[g]ross floor area” is defined as the “floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

15. The term “fire wall” is not defined in NFPA 101.

16. Section 633.025(6), *Florida Statutes*, with respect to existing buildings, authorizes the fire official to approve a reasonable alternative to the Florida Fire Prevention Code, as long as it affords an equivalent degree of lifesafety and safety of property. The building in question is new construction; therefore this provision does not apply.

17. The question is essentially whether the builders of a building in excess of 20,000 square feet gross can avoid installing an approved, supervised automatic sprinkler system throughout by installing a four-hour fire wall somewhere in the building and reconfiguring the space into two buildings of less than 20,000 square feet gross each.

18. NFPA 101-14 does not contain an exception to the sprinkler requirement and does not address the possibility of using a four-hour fire wall to separate a building into two buildings.

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

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

2. Questions and Responses:

Question A. Whether a four-hour fire wall can be installed in a building larger than 20,000 square feet gross thereby avoiding the sprinkler requirements of NFPA 101, requiring a building of that size to be equipped with a supervised sprinkler system throughout , if approved by the AHJ.

Answer: NFPA 101-14.3.5.1.1 does not contain an exception relating to a four-hour fire wall. This question can be addressed by the Florida Building Commission which has authority to interpret the Florida Building Code.

Question B. If yes, would any penetrations be allowed in the four-hour fire wall; and would a parapet wall be required?

Answer: Same as the answer to Question A.

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, on the _____ day of
February, 2009.

Brian London
Deputy Chief Financial Officer

Copies furnished to:

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