



DEPARTMENT OF FINANCIAL SERVICES

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
State Fire Marshal

In re the Matter of

Derryl B. O'Neal, Fire Chief,
Madeira Beach Fire Department,
Petitioner

Case No.: 68479-03-SP

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 May 28, 2003, by the Department of Financial Services, hereinafter referred to as the Department, from Derryl B. O'Neal, Fire Chief, Madeira Beach Fire Department, 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. He is seeking a ruling on the interpretation of a county's construction licensing board of the use of a spiral staircase as a second means of egress in a 5 story apartment type building.

B. Petitioner asserts that the county's construction licensing board's ruling that a spiral staircase may be used as a secondary means of egress circumvents the Florida Fire Prevention Code and establishes a precedent for future actions.

QUESTIONS

5. Petitioner's questions are:

A. Does a county construction licensing board have the authority to supersede or lessen the Florida Fire Prevention Code?

B. Are spiral staircases allowed as a second means of egress in 5 story apartment type occupancies of new construction?

DISCUSSION

6. Neither a local amendment to the Florida Fire Prevention Code nor a ruling by a county construction licensing board may weaken the Florida Fire Prevention Code. (See §§633.0215(7), 633.0215(10), and 633.025(4), Florida Statutes, which provide the only three ways in which the Florida Fire Prevention Code may be amended.)

7. Any local amendment to the Florida Fire Prevention Code must be adopted strictly in accordance with one of the two procedures described in Section 633.0215 or the procedure described in Section 633.025(4), Florida Statutes.

8. NFPA 101, the Life Safety Code, 2000 edition, was adopted pursuant to Section 4A-60.004, Florida Administrative Code.

9. The county construction licensing board referred to Subdivision 30.2.4 of NFPA 101, the Life Safety Code, and noted that Subdivision 30.2.4 addresses the minimum number of exits.

10. Subdivision 30.2.4 does not, however, address what constitutes an acceptable component of the means of egress, for which we must look to Subdivision 30.2.2.

11. NFPA 101 in Subdivision 30.2.2 does permit the use of spiral stairs as a secondary means of egress; however, Subdivision 30.2.2.3.3 provides that spiral stairs are permissible only when the spiral stairs are located within a single dwelling unit, saying, “**30.2.2.3.3:** Spiral stairs complying with 7.2.2.2.3 shall be permitted within a single dwelling unit.” (Emphasis supplied).

12. Finally, while Subdivision 30.2.2.3 permits any stairs in compliance with Subdivision 7.2.2 to be used as a means of egress, and while Subdivision 7.2.2 includes spiral stairs which comply with its requirements, it is clear from a reading of Subdivision 30.2.2.3.3 that spiral stairs within a single dwelling unit are the only kind permitted in the type of building described as confirmed by a reading of Subdivision 7.2.2.2.3.1, which states, “Where specifically permitted for individual occupancies by Chapters 12 through 42, spiral stairs shall be permitted as a component in a means of egress....” (Emphasis supplied).

NOW, THEREFORE, it is the position of the Division of State Fire Marshal of the Department of Financial Services that:

13. A county construction licensing board does not have the authority or the legal ability to weaken, lessen, or in any manner make less stringent the requirements of the Florida Fire Prevention Code as found in Rule Chapter 4A-60 and the codes and standards adopted therein, pursuant to Sections 633.0215(7), 633.0215(10), and 633.025(4), Florida Statutes.

14. A spiral stairway may serve as a second means of egress PROVIDED that it only serves a single dwelling unit.

15. A spiral stairway which serves more than a single dwelling unit may not serve as a second means of egress.

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 Section 120.565, Florida Statutes, and 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 _____, 2003.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

Derryl B. O'Neal, Fire Chief
Madeira Beach Fire Department
300 Municipal Drive
Madeira Beach, Florida 33708

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