



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

NOV 25 2009

Docketed by 

In The Matter Of:

JACK STEVENSON,
Fire Marshal, City of Venice

Case No.: 105883-09-FM

Petitioner,

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 Jack Stevenson, Fire Marshal, City of Venice (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on or about August 9, 2009. 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 the 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 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 Sections 120.565 and 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 opinion as to the applicability of a statutory or rule provision as it applies to Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the State Fire Marshal to issue a Declaratory Statement when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code (hereinafter the "Code").

5. The Petition involves a single family dwelling located at 404 Spadaro Drive, Venice, Florida, and the applicable standards of the Code when the structure converts to a resort dwelling.¹

6. Receipt of the Petition herein was published in Volume 35, Number 32 of the *Florida Administrative Weekly*, on August 14, 2009.

QUESTIONS

7. The Petition poses the following questions:

A. Is the conversion of an existing single family residential home into a resort dwelling as defined in Rule Chapter 69A-43, *Florida Administrative Code*, a change of occupancy as defined in National Fire Protection Association ("NFPA") 101-43?

B. If the answer to Question A is yes, is the resort dwelling occupancy classification a higher hazard classification than the previous occupancy classification as a single family residential home?

¹ The reference to "resort dwelling" in the Petition is interpreted as "a transient public lodging facility licensed by Department of Business and Professional Regulations," because that is the licensure category regulated by Rule 69A-43, *Florida Administrative Code*.

C. If the answer to Question B is yes, do the provisions of NFPA 101-43.7.2.2 stating “the building shall comply with the requirements of the occupancy chapters applicable to new construction” apply?

D. If the answer to Question C is yes, do the provisions of NFPA 101-24.3.5.1 require the installation of an approved automatic sprinkler system in the resort dwelling?

DISCUSSION

8. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested by a substantially affected person or a local enforcing agency. The Code is adopted by rule of the State Fire Marshal, who has final interpreting authority; however, it is enforced by the local authority having jurisdiction. The current Code became effective on December 31, 2008.

9. The Department adopted Rule Chapter 69A-43, *Florida Administrative Code*, as its “Uniform Fire Safety Standards for Transient Public Lodging Establishments, Timeshare Plans, or Timeshare Unit Facilities.”²

10. Rule 69A-43.018, *Florida Administrative Code*, adopts NFPA 101 (2006 edition) as the uniform firesafety standards for transient public lodging establishments. By its terms, Rule 69A-43.003 applies when a structure becomes licensed as a transient public lodging establishment by the Department of Business and Professional Regulation (“DBPR”) under subsections (4) and (10), of Section 509.013, *Florida Statutes*.

11. Rule 69A-43.018, *Florida Administrative Code*, applies to one and two family dwellings licensed as public lodging establishments. These dwellings must comply with NFPA101-24.

12. NFPA 101-24 applies to “new buildings and to existing buildings. . .”³ NFPA 101-24.3.5.1 provides that all new one and two family dwellings shall be “protected throughout by an approved automatic sprinkler system in accordance with 24.3.5.2.”

² Rule 69A-43.001, F. A. C.

³ NFPA 101-24.1.1.2.

This provision applies to the instant change of occupancy from single family residential to transient public lodging establishment because Rule 69A-43, Florida *Administrative Code*, is applicable to when a structure becomes licensed as a transient public lodging facility.

13. NFPA 101-43 relates to building rehabilitation; it states that “any building undergoing change of use or change of occupancy classification (see 43.2.2.1.5 and 43.2.2.1.6) shall comply with the requirements of 43.7.”⁴

14. The phrase ‘change of occupancy’ is defined at NFPA101-3.3.33 and 43.2.2.1.6 as the “change in the occupancy classification of a structure or portion of a structure.” The phrase ‘change of use’ is defined at NFPA 101-3.3.34 and 43.2.2.1.5, as a “change in the purpose or level of activity within a structure that involves a change in application of the requirements of the Code.”

15. The term ‘residential occupancy’ is defined at NFPA 101-6.1.8.1 as “an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional.” The term “transient public lodging establishment,” which is the licensure category addressed by Rule Chapter 69A-43, *Florida Administrative Code*, is defined in Section 509.215(4(a)1, *Florida Statutes*, to mean “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”

16. NFPA 101-43.7.2.2 provides that a “change of occupancy classification occurs to an occupancy classification of a higher hazard classification category (that is to a lower number), as addressed by Table 43.7.3...” Table 43.7.3 classifies all residential occupancy in the same category.

⁴ NFPA 101-43.2.2

17. While single family dwellings are not regulated by Chapter 633, *Florida Statutes*, transient public lodging establishments are regulated by both Chapter 633, *Florida Statutes*, and by the NFPA. That additional regulation, as well as the definitions of both categories, is evidence that a conversion from a single family dwelling to a transient public lodging establishment constitutes a change of use.

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. The answers to the Petitioner's questions are:

Question A. Is the conversion of an existing single family residential home into a resort dwelling as defined in Rule Chapter 69A-43, *Florida Administrative Code*, a change of occupancy as defined in National Fire Protection Association 101-43?

Answer: No, the conversion is not a change of occupancy classification as defined by NFPA 101-43.2.2.1.6; however, it is considered a "change in use" as defined at NFPA 101-3.3.34 and 43.2.2.1.5.

Question B. If the answer to Question A is yes, is the resort dwelling occupancy classification a higher hazard classification than the previous occupancy classification as a single family residential home?

Answer: No, as defined in NFPA 101-3.3.168.13, a single family dwelling and a transient public lodging establishment are both classified as residential occupancies and therefore a transient public lodging establishment is not a higher hazard classification.

Question C. If the answer to Question B is yes, do the provisions of NFPA 101-43.7.2.2 stating "the building shall comply with the requirements of the occupancy chapters applicable to new construction" apply?

Answer: Yes. The Florida Fire Prevention Code (FFPC) NFPA 101, 2006, applies when the structure becomes licensed as a transient public lodging establishment. The FFPC, however, does not regulate the existing occupancy class of a single family dwelling

Question D. If the answer to Question C is yes, do the provisions of NFPA 101-24.3.5.1 require the installation of an approved automatic sprinkler system in the resort dwelling?

Answer: Yes. Assuming the resort dwelling has been licensed as a transient public lodging establishment, Rule 69A-43.018, *Florida Administrative Code*, requires compliance with Chapter 24 of NFPA 101, as adopted in Rule Chapter 69A-3, *Florida Administrative Code*, in its entirety.

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*. Review proceedings must be instituted by filing a petition or notice of appeal with Tracey Beal, Agency Clerk, Florida Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida, 32399-0390, within thirty days of rendition of this Declaratory Statement. A copy of the notice of petition must also be filed with the appropriate district court of appeal.

ENTERED in the City of Tallahassee, Leon County, Florida, on November 25, 2009.



A handwritten signature in black ink, appearing to read "Brian London". The signature is written in a cursive, flowing style.

Brian London
Deputy Chief Financial Officer

Copies furnished to:

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