



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In The Matter Of:

TOWNHOMES OF SUNTREE,

Case No.: 89453-07-FM

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

FINAL ORDER OF DENIAL

THIS CAUSE came on for consideration upon a Petition for Declaratory Statement (hereinafter "Petition") filed on behalf of Townhomes of Suntree (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on February 26, 2007. Upon consideration thereof, and being duly advised in the premises, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Petition requests a Declaratory Statement with regard to the application of Section 1521.4, Florida Building Code, to Brevard County, Florida. More specifically, the petition asks whether Brevard County falls within a "High-Velocity Hurricane Zone" as defined by Section 1521 of the Code, and is, therefore, subject to the requirements of section 1521.4
2. The Declaratory Statement is requested pursuant to the provisions of Section 120.565, *Florida Statutes*, and Rules 28.105 and 69A.007, *Florida Administrative Code*, pursuant to which the Department is authorized to issue Declaratory Statements relating to the applicability of a statutory provision, a rule, or an 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 relating to the Florida Fire Prevention Code and Life Safety Code, when requested to do so by a substantially affected person, or a local enforcing agency.

3. The Florida Building Commission, administratively within the Department of Community Affairs, is charged with adopting and interpreting the provisions of the Florida Building Code pursuant to the provisions of Sections 553.73 and 553.775, *Florida Statutes*. Neither the Department nor the State Fire Marshal has jurisdiction or authority to issue a Declaratory Statement interpreting the Florida Building Code.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, the Petition for Declaratory Statement filed herein is DENIED.

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 _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

Copies furnished to:

James M. Nicholas, Esquire
Attorney for Townhomes of Suntree
1790 Highway A1A, Ste 202
Satellite Beach, Florida 32937

Lesley Mendelson, Assistant General Counsel
Department of Financial Services
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340