



In The Matter Of:

MICHAEL J. BARNES

Case No.: 91645-07-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 (hereinafter "Petition") filed by Michael J. Barnes (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on September 6, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. 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 and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

2. 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

3. Petitioner is a homeowner at Bayou Pines Owners Association, Incorporated, 810 Elgin Parkway, Northeast, Fort Walton Beach, Florida. According to the records of the Okaloosa County Property Appraiser website, the home was built in 1984.

4. The Petition was filed pursuant to the authority of Section 120.565, *Florida Statutes*, and Rules 28.105 and 69A-69.007, *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 to the Petitioner's particular set of circumstances.

5. The subject of the Petition is National Fire Protection Association (hereinafter "NFPA") 1-18.2.2.2, 18.2.2.5.4, 18.2.2.5.7, 18.2.2.5.8 and 18.2.3.1.1., 2005 edition, regarding fire access.

6. The Petitioner states that Bayou Pines Owners Association ("Association") is a homeowner association comprised of fifteen three-level townhouse units ("units") and common area property located in Okaloosa County, Florida. The common area property, e.g., streets, landscaping, boat dock, etc., is owned or leased by the Association for the common use and enjoyment of the homeowners. According to the Petitioner, the common area access street in front of the units is a fire lane that provides limited access under normal operating conditions. The access street provides entrance to the interior of each townhouse.

7. Petitioner alleges that he has repeatedly complained to the Association and the local Fire Control District about vehicles being parked in what Petitioner terms "the fire lane." Petitioner is concerned that if an emergency vehicle were to respond to an emergency at his unit, it could be delayed, or denied access to his unit which is located adjacent to the end cap or dead

end of “the fire lane.” Petitioner contends that a fire ladder cannot be properly deployed to retrieve a resident from his unit. Petitioner also contends that certain unit owners, tenants, and guests are permanently parking their vehicles in the Association “fire lane,” specifically on the end caps of the road. Due to the lack of fire code enforcement, Petitioner alleges, certain owners, tenants and their guests are using “the fire lane” as private parking spaces.

8. In a May 27, 2004, letter to Mr. Tom Rief, a copy of which is attached to the Petition, the local fire marshal, Frederick W. Senkbeil, citing the 2003 edition of the Florida Fire Prevention Code, stated that as authority having jurisdiction, he had the discretion to order that signs be placed designating fire lanes; however, in his 18 years as fire inspector and fire marshal for the fire district, he had never received a complaint from emergency crews regarding access to the units on Petitioner’s street. Mr. Senkbeil therefore concluded that the street did not require signs.

9. Mr. Senkbeil wrote to the Petitioner again on July 19, 2006, advising that he had checked the driveway and parking areas of the Bayou Pines Townhouses on five different occasions, at varying times of the day, and never found any situation that would hinder fire department access. Mr. Senkbeil further advised that he would not object to the Association installing signs, but did not find sufficient justification to demand that the Association install signs. A copy of the letter is attached to the Petition.

10. It appears that Petitioner appealed Mr. Senkbeil’s July 19 letter to the Okaloosa County Fire Code Advisory Board on July 21, 2006. On September 7, 2006, the Honorable Elaine Tucker, Chairman, Okaloosa County Commission, advised Petitioner that she concurred with the assessment of Mr. Senkbeil, and would take no further action on the appeal, suggesting that the matter involved a personal dispute between the Petitioner and his neighbor. Copies of

both letters are attached to the Petition. On April 23, 2007, the Association amended its operating policies to prohibit parking on the street adjacent to the Petitioner's unit, except for loading and unloading, and prohibit blocking of any unit's driveway at any time.

11. Petitioner contends that the real issue is fire code enforcement.

12. Notice of receipt of the Petition herein was published in Volume 33, Number 37 of the *Florida Administrative Weekly*, on September 21, 2007.

QUESTIONS

13. The Petition poses the following questions:

A. Are authorities having jurisdiction within their legal authority to not require erection of "Fire Lane – No Parking" signs on a fire department access road in a residential townhouse complex when a substantially affected person complains of vehicles parked in a fire department access road? If the answer is "yes," please clarify what other means are available to publicly prohibit or deter parking on the subject street.

B. Can the authority having jurisdiction for enforcing fire codes permit or waive fire lane obstruction requirements and allow selected vehicles to permanently park on the subject road? If the answer is "yes," who, and under what conditions, can a waiver be granted?

C. If the Association is unable or unwilling to enforce the fire code on vehicles parking on the subject street, what actions are required of the authority having jurisdiction if a substantially affected person complains?

D. Is the authority having jurisdiction bound to cite parking violators who obstruct access to fire lanes?

E. What rights does a substantially affected person have if a government official or agency responsible for enforcing the Florida Fire Prevention Code declines or fails to do so?

DISCUSSION

14. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements 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. The State Fire Marshal is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code, and the Petition is filed by a substantially affected person, or a local enforcement agency.

15. The 2005 edition of National Fire Protection Association 1 (hereinafter "NFPA 1"), is not currently adopted as a rule of the Department. Rule 69A-3.012(1), *Florida Administrative Code*, adopts NFPA 1, 2003 edition. Chapter 18 thereof addresses fire department access and water supplies. NFPA 1-18.2.2.5.8, (Florida specific) provides that:

Fire lanes shall be marked with freestanding signs with the wording, "NO PARKING FIRE LANE BY ORDER OF THE FIRE DEPARTMENT" or similar wording. Such signs shall be 12 in. by 18.in. with a white background and red letters and shall be a maximum of seven feet in height from the roadway to the bottom part of the sign. The signs shall be within sight of the traffic flow and be a maximum of 60 feet apart.

16. NFPA 1-18.2.2.2 provides that a fire department access road shall extend, "to within 50 feet (15 m) of a single exterior door providing access to the interior of the building." NFPA 1-18.2.2.5.4 provides that dead-end fire department access roads, "in excess of 150 ft. (46 M) in length shall be provided with approved provisions for the turning around of fire apparatus." NFPA 1-18.2.2.5.7 requires that, "[w]here required by the AJH, approved signs or other approved notices shall be provided and maintained for fire department access roads to identify such roads, or prohibit the obstruction thereof, or both."

17. The foregoing provisions apply prospectively to new construction and relocation.¹

The Petitioner's unit has been in existence since 1984.

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

Question A. Are authorities having jurisdiction within their legal authority to not require erection of "Fire Lane – No Parking" signs on a fire department access road in a residential townhouse complex when a substantially affected person complains of vehicles parked in a fire department access road? If the answer is "yes," please clarify what other means are available to publicly prohibit or deter parking on the subject street.

Answer: Yes. With regard to the facts alleged in the Petition, the authority having jurisdiction is within his legal authority not to require parking signs on the access road because the units in question are already constructed. The Code authorizes a substantially affected person to petition the Department for a Declaratory Statement on the application of its statutes and rules to the Petitioner's particular set of circumstances. A declaratory statement entered by the Department may be appealed to a Florida District Court of Appeal.

Question B: Can the authority having jurisdiction for enforcing fire codes permit or waive fire lane obstruction requirements and allow selected vehicles to permanently park on the subject road? If the answer is "yes," who, and under what conditions, can a waiver be granted?

Answer: The Petition does not allege that the agency responsible for enforcing the fire code has waived or intends to waive selected vehicles from complying with the code. Therefore, the Department is without authority to offer an opinion on this question.

¹ NFPA 1-18.2.2.1 provides that fire department "access shall be provided in accordance with section 18.2 for every facility, building, or portion of a building **hereafter** constructed or relocated." (Emphasis added).

Question C. If the Association is unable or unwilling to enforce the fire code on vehicles parking on the subject street, what actions are required of the authority having jurisdiction if a substantially affected person complains?

Answer: The Petition does not allege that the homeowner association is unable or unwilling to enforce the fire code on vehicles parking in a fire lane. On the contrary, it appears that the Association has prohibited parking on the road. Therefore, the Department is without authority to offer an opinion on this question.

Question D. Is the authority having jurisdiction bound to cite parking violators who obstruct access to fire lanes?

Answer: The question goes beyond the facts asserted in the Petition, and the Code provisions set forth therein. The Department is authorized only to opine on the application of its statutes, rules, and orders on the Petitioner's particular set of facts.

Question E. What rights does a substantially affected person have if a government official or agency responsible for enforcing the Florida Fire Prevention Code declines or fails to do so?

Answer: The question goes beyond the facts asserted in the Petition and the Code provisions set forth therein. Therefore, the Department is without authority to offer an opinion on this question. The following notice advises of the appeal rights for this Declaratory Statement.

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 December, 2007.

Eric W. Miller
Deputy Chief Financial Officer

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