



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

FEB 25 2010

Docketed by 

In The Matter Of:

City of Belleair Beach, Florida

Case No.: 107986-10-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 (“Petition”) from City of Belleair Beach, Florida. (“Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (“Department”), on December 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 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 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.

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. This 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 an authority having jurisdiction and 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 Florida Fire Prevention Code ("Code") requirements regarding fire pumps and standpipes in condominiums.

6. The Petition alleges the following facts:

A. In 1974, the Petitioner enacted Ordinance 107 adopting the National Fire Prevention Code and the National Fire Code.

B. In 1979, the Petitioner reenacted Ordinance 108 (Zoning and Building Code) which included the following provisions:

(a) Any building or other structure within the RM district I which is 30 feet or more in height, or three stories, shall be equipped with standpipes of not less than four inches in diameter, with outlets on each floor fitted with 2.5-inch shutoff valves and 2.5 to 1.5-inch reducer coupling with the National Standard Fire Department threads.

(b) Approved 1.5-inch hose with a 1.5-foot fog nozzle shall be of a sufficient length to reach all areas of each floor and shall be enclosed in metal cabinets with glass doors. Such system shall be equipped at the basement or ground level with a fire pump to pump water with a pressure of at least 50 psi at the top floor level where a Siamese outlet shall be located. At an accessible location on the ground level, a 2.5 inch fire department Siamese connection shall be installed. All connections for fire department use shall have National Standard Fire Department threads.

These provisions are currently in effect.

C. The Association of Monte Marte Condominiums (“Association”), located at 3500 Gulf Boulevard, Belleair Beach, Florida, wants to eliminate its existing fire pumps and standpipes on the basis that existing fire hydrant water pressure is adequate to bring sufficient water to the highest part of the building for fire suppression purposes. The structure was built in conformity with the provisions of Ordinance 108 in the 1980s. The Association included a copy of a report issued by their consultant, Global Fire Engineering, with their request.

D. The condominium structure is four stories high with a maximum top floor height of 27 feet. When the building was originally constructed, it was provided with a fire pump that supplied fire hose connections on a standpipe system. The buildings are not protected with automatic sprinklers.

E. The District Fire Marshal issued a letter to the Association approving the removal of the structure’s fire pump when a new hydrant is installed.

F. Since the Code is a fluid document subject to change, the Petitioner has prepared Ordinance 09-11, removing the specific language of Ordinance 108 and replacing it with language that adopts the Code pertaining to fire pumps and standpipes.

G. The Petitioner’s primary concern is for the safety of the residents of the affected condominiums.

7. Counsel for Petitioner has confirmed that no litigation is pending on this matter.

8. Receipt of the Petition herein was published in Volume 35, Number 51 of the *Florida Administrative Weekly*, on December 24, 2009.

QUESTIONS

9. The Petition poses the following questions:

A. What are the existing Code requirements regarding fire pumps and standpipes in condominiums?

B. May the District Fire Marshal legally authorize the substitution of a fire hydrant for a fire pump in a condominium?

C. Does Ordinance 09-11 provide adequate legislation to enforce the provisions of the Code as it pertains to fire pumps and standpipes or other requirements of applicable fire codes?

D. May a municipality impose more strict fire prevention standards by local ordinance than those set forth in the Code?

DISCUSSION

10. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements 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. The Department is required to issue a declaratory statement when requested by an authority having jurisdiction and the request involves the application of the Code to the Petitioner's particular set of circumstances.¹

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and update it every three years. National Fire Protection Standards ("NFPA") 1 "Uniform Fire Code, Florida Edition" and 101, "Life Safety Code, Florida Edition," are adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each

¹ Section 633.01(6), *Florida Statutes*.

municipality, county, and special district with firesafety responsibilities, and directs that the Code must be enforced by the local authority.

12. Local authorities with firesafety responsibilities may establish alternatives to those standards adopted in the Code on a case-by-case basis, in order to meet special situations, if the alternative requirements result in a level of protection to life, safety, or property equal to or greater than the applicable Code provision. Sections 633.025(4), and 633.0215(10), *Florida Statutes*, set forth the conditions and procedural requirements regulating local enactments.

13. The Code adopts the 2006 edition of NFPA 1. Chapter 13 of the 2006 edition of NFPA 1 addresses fire protection systems. The term “fire protection system” is defined at Section 633.021(9), *Florida Statutes*, as:

a system individually designed to protect the interior or exterior of a specific building, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, CO₂ systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, and tanks and pumps connected to fire sprinkler systems.

Standpipe systems are but one of the components that may be included in a fire protection system. NFPA-1.13.2 sets forth circumstances under which a standpipe system may be required such as the height and depth of the building, building occupancy classification, and whether the building is new or existing. Fire pumps and standpipes are commonly used as an integral component of a fire protection system. Fire protection systems may be pre-engineered to be installed within factory specific limitations or engineered for a specific building. The requirements for fire pumps are further driven by the minimum water pressure necessary to adequately meet the demand of the fire protection system. These factors can be influenced by the

proximity of the protected structure to fixed water supplies, time of day, size of infrastructure water mains and level of development in the immediate area. The specific requirements relating to fire pumps and standpipes must be designed based on the specific building and other parameters unique to the geographic area.

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

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

B. Questions and Responses:

Question A. What are the existing Code requirements regarding fire pumps and standpipes in condominiums?

Answer: The question is too general to answer in a Declaratory Statement, which must address the Petitioner's particular set of circumstances. Many factors influence the answer, such as the height and depth of the particular building, building occupancy classification, the age of the building, whether the system is pre-engineered or engineered, the water pressure, the building's proximity to fixed water supply, the size of water mains and the level of development in the immediate area. Thus, the Petitioner has not included enough information to permit the Department to answer this question.

Question B. May the District Fire Marshal legally authorize the substitution of a fire hydrant for a fire pump in a condominium?

Answer: The authority having jurisdiction is charged with enforcement of the Code and is vested with the discretion to establish alternative requirements that provide equal or better fire safety protection on a case-by-case basis, in accordance with his analysis of the specific

information available, including the substitution of a fire hydrant for a fire pump in a condominium.

Question C. Does Ordinance 09-11 provide adequate legislation to enforce the provisions of the Code as it pertains to fire pumps and fire standpipes or other requirements of applicable fire codes?

Answer: Section 633.025, *Florida Statutes*, provides adequate legislation for the enforcement of the provisions of the Code as it pertains to fire pumps and fire standpipes, as the Code is deemed adopted by law in every jurisdiction having firesafety responsibilities. Every jurisdiction with firesafety responsibilities is vested by law with enforcement authority, without the necessity of adoption at the local level. The local jurisdiction can only enact ordinances that are more restrictive than the Code, and then only by following the procedures set forth in Sections 633.215(10) and 633.025(4), *Florida Statutes*. If submitted pursuant to Section 633.0215(3), *Florida Statutes*, the department will evaluate the ordinance for inclusion as a statewide amendment to the Florida Fire Prevention Code. If the Department determines that the ordinance is not suitable for inclusion as a statewide amendment, the City will be notified accordingly at which time, the City may readopt the ordinance per 633.0215(3).

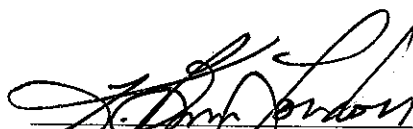
Question D. May a municipality impose more strict fire prevention standards by local ordinance than those set forth in the Code?

Answer: Yes, a municipality may impose stricter fire prevention standards than the minimum requirements established under the authority of Section 633.0215, *Florida Statutes*, under the conditions and procedures set forth in Sections 633.215(10) and 633.025(4), *Florida Statutes*, as discussed above.

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 Julie Jones, Agency Clerk, Division of Legal Services, 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 25 day of February, 2010.



Brian London, Deputy Chief Financial Officer

Copies furnished to:

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