



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

CITRUS COUNTY BUILDER'S
ASSOCIATION, INC., a Florida
Not for Profit Corporation,

Case No.: 87995-07-FM

Petitioner,

CITRUS COUNTY, FLORIDA,

Intervener.

Petition for Declaratory Statement
Before the Department of Financial
Services

FINAL ORDER

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Citrus County Builder's Association, Inc., a Florida not for profit corporation (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on October 14, 2006. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

BACKGROUND

1. Petitioner is Citrus County Builder's Association, Inc., a Florida nonprofit corporation, located in Locanto, Florida.
2. The subject of the Petition, as stipulated by the parties, is whether Citrus County's creation of Section 4247 of its Land Development Code constitutes an amendment to the Florida Fire

Prevention Code (hereinafter “FFPC”) Section 10.12, and if so, whether the ordinance was adopted in accordance with Sections 633.0215 and 633.025, *Florida Statutes*.

3. Notice of receipt of the Petition herein was published in Volume 32, Number 44 of the *Florida Administrative Weekly*, on November 3, 2006.

4. The Citrus County Board of County Commissioners (hereinafter “Intervener”) filed a Memorandum of Law in opposition to the Petition, to which Petitioner responded.

5. On March 13, 2007, an interim order was entered offering Intervener an opportunity to hold the hearing anticipated by Section 633.025(4)(d), *Florida Statutes*, within forty-five days of receipt of the order. The order also stated that in the event the Intervener elected not to hold the hearing, the Department would conduct a hearing.

6. On March 23, 2007, the Department received a letter from Michele L. Lieberman, Intervener’s chief assistant county attorney, declining to conduct a hearing. Thereafter, on April 4, 2007, a Notice of Assignment and Order was issued.

7. The parties filed a Joint Stipulation received by the Department on April 25, 2007, in which they agreed on a briefing schedule and otherwise responded to the order. The following questions, statement of material facts, and applicable statutes, rules and orders, were agreed upon by the parties.

QUESTIONS

8. The parties pose the following questions:

A. Whether Citrus County’s creation of Section 4247 of its Land Development Code constitutes an amendment to the FFPC, Section 10.12.

B. If yes, whether the provision was adopted in accordance with Sections 633.0215 and 633.025, *Florida Statutes*, such that the Citrus County Builders Association, Inc., and its builder members must comply therewith.

C. If no, whether the Citrus County Builders must comply with Land Development Code Section 4247 and/or with Fire Prevention Section 10.12.

STATEMENT OF MATERIAL FACTS

9. The parties stipulate to the following material facts:

A. Ordinance 2006-A14 was adopted by the Citrus County Board of County Commissioners on September 12, 2006.

B. Ordinance 2006-A14 was adopted pursuant to the notice and public hearing required for the adoption of county ordinances pursuant to Section 125.66, *Florida Statutes*.

C. Section 10 of Ordinance 2006-A14 adopted a new provision within the Land Development Code, Section 4247, entitled “Key Box Access.”

D. Citrus County, Florida, is a local government with the duty and authority to enforce FFPC per Sections 633.025 and 633.121, *Florida Statutes*, and Rule 69A-60.007, *Florida Administrative Code*, and is the authority having jurisdiction as defined by Rule 69A-3.009, *Florida Administrative Code* and FFPC 3.2.2.

E. The Citrus County Builder’s Association, Inc., is a Florida not-for-profit corporation whose members are licensed builders of property that is subject to compliance with the Florida Statewide Building Code, the FFPC and Citrus County Land Development Code, to include Section 4247, as amended.

F. At all public meetings on the adoption of Ordinance 2006-A14, Petitioner was represented and placed objections on the record to the adoption of Land Development Code Section 4247.

G. On or about October 17, 2006, Petitioner filed its Petition with the Division of State Fire Marshal seeking a declaratory statement.

APPLICABLE STATUTES AND RULES

10. The parties agree that the following statutes and rules are applicable to these questions.

A. Sections 125.01(1)(d), 553.72, 553.73, 633.0215, and 633.025, *Florida Statutes*.

B. Rules 69A-60.002 and 69A-60.007, *Florida Administrative Code*.

C. FFPC, adopted in rule 69A-60, *Florida Administrative Code*, Sections 3.2.2, 10.12.1, 10.12.2, and 10.12.3.

D. Citrus County Land Development Code, Section 4247, as amended.

STATEMENT OF EACH PARTY'S POSITION

11. Petitioner contends that Land Development Code Section 4247 constitutes an amendment to the FFPC, the adoption of which failed to comply with Sections 633.0215 and 633.025, *Florida Statutes*. As such, Section 4247 is invalid and the Citrus County Builders need only comply with FFPC Section 10.12.

12. Intervener contends that Land Development Code Section 4247 is not an amendment to the FFPC, but rather a fire-related infrastructure requirement necessary to protect certain enumerated facilities. As such, the Citrus County Builders must comply with this provision. Further, to the extent that the County retains discretion to enforce Fire Prevention Code 10.12, Citrus County Builders must also comply with the determination of the County thereunder.

13. The parties waived the ninety day period set forth in Section 120.565 (3), *Florida Statutes*, and requested oral argument via telephone conference.

14. The parties' briefs were timely submitted in accordance with their agreed upon schedule.

15. By letter dated July 10, 2007, the parties withdrew their request for oral argument in this matter, and requested that the Department rule based on the record as agreed to in the respective briefs submitted by the parties.

DISCUSSION

16. The Department has authority to issue this Final Order pursuant to Section 633.025(4)(d), *Florida Statutes*, which authorizes a substantially affected person to appeal to the Department a local government's resolution of a challenge to a local amendment to the FFPC.

17. Section 125.01(1)(d), *Florida Statutes*, empowers county government, "to the extent not inconsistent with general or special law," to:

Provide fire protection, including the enforcement of the Florida Fire Prevention Code, as provided in ss. 633.022 and 633.025, and adopt and enforce local technical amendments to the Florida Fire Prevention Code as provided in those sections and pursuant to s. 633.0215.

18. Section 125.56(1), *Florida Statutes*, provides that:

The board of county commissioners of each of the several counties of the state is authorized to enforce the Florida Building Code and the Florida Fire Prevention Code, as provided in ss. 533.80, 633.022, and 633.025, and, at its discretion, to adopt local technical amendments to the . . . Florida Fire Prevention Code, pursuant to s. 633.0215. . . Upon a determination to consider amending the . . . Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The Board shall hear all interested parties at the public hearing and may then amend the . . . fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the . . . State Fire Marshal pursuant to s. 633.0215.

19. Sections 553.72 and 553.73, *Florida Statutes*, relate to the Florida Building Code, which provides that the FFPC be adopted, modified, updated, interpreted, and maintained by the Department of Financial Services, and included by reference as sections in the Florida Building Code.¹

20. Section 633.0215(1), *Florida Statutes*, directs the State Fire Marshal to adopt by rule:

The Florida Fire Prevention Code which shall contain or incorporate by reference all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules. The State Fire Marshal shall adopt a new edition of the Florida Fire Prevention Code every third year.

The section also authorizes the State Fire Marshal to incorporate within sections of the FFPC provisions that address regional and local concerns and variations, providing a procedure for local amendments to be included in the FFPC. Subsection (3)(b) of 633.0215, *Florida Statutes*, provides that:

Any local amendment to the Florida Fire Prevention Code adopted by a local government shall be effective only until the adoption of the new edition of the Florida Fire Prevention Code, which shall be every third year. At such time, the State Fire Marshal shall adopt such amendment as part of the Florida Fire Prevention Code or rescind the amendment. The State Fire Marshal shall immediately notify the respective local government of the rescission of the amendment and the reason for the rescission. After receiving such notice, the respective local government may readopt the rescinded amendment.

21. Section 633.025, *Florida Statutes*, states that the FFPC adopted by the State Fire Marshal shall be deemed adopted by, and enforced by, each municipality, county, and special district with firesafety responsibilities. The section provides that the FFPC so adopted shall be the minimum fire prevention codes and that each municipality, county, or special district with firesafety responsibilities may adopt more stringent firesafety standards “subject to the requirements of this subsection.” The

¹ Sections 533.72(4) and 533.73, *Florida Statutes*.

provision provides with particularity the procedure that must be followed to adopt local amendments. It also provides that a local government which adopts amendments to the FFPC must provide a procedure by which the validity of such amendments may be challenged by a substantially affected party to test the amendment's compliance with the provisions of the section. The challenging party is entitled to a hearing within 45 days of the challenge, unless the local government agrees to stay enforcement.² A substantially affected person can appeal the local government's resolution to the Department and the Department must determine if the amendment complies with this section. The Department's action is subject to judicial review pursuant to Section 120.68, *Florida Statutes*.

22. Citrus County did not follow the provisions of Section 633.025, *Florida Statutes*, when enacting Section 4247. Any question in that regard was answered when the Department issued an order offering the county an opportunity to hold the hearing required by Section 633.025(4)(d), *Florida Statutes*, and the county declined, stating that it didn't believe the challenged provision constituted an amendment to the FFPC such that the provision would apply.

23. The central issue to be resolved is whether the challenged provision is an amendment to the FFPC, because, if so, then the provisions of Section 633.025, *Florida Statutes*, have not been met, and the Department is required to make a finding to that effect in a Final Order pursuant to the provisions of Section 633.025(1)(d), *Florida Statutes*.

24. Citrus County argues that the challenged provision is not an amendment to the FFPC because it is neither inconsistent with, nor more or less stringent than, the FFPC.

25. The Citrus County Board of County Commissioners adopted the FFPC in Chapter 46, Article II, of the *Citrus County Code of Ordinances*, entitled "Fire Prevention and Protection Fire

² Section 633.025(4)(d), *Florida Statutes*.

Safety Standards.” The FFPC is adopted in Chapter 69A-60, *Florida Administrative Code*, which adopts NFPA 1, Uniform Fire Code, 2003 edition.³ Chapter 10 thereof addresses “General Fire Safety;” Section 10.12 is entitled “Access to Structures or Areas; the subsections thereunder provide as follows:

10.12.1.1.1 **Access Box(es).** The AHJ shall have the authority to require an access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security.

10.12.2 **Access to Gated Subdivisions or Developments.** The AJH shall have the authority to require fire department access be provided to gated subdivisions or developments through the use of an approved device or system.

10.12.3 **Access Maintenance.** The owner or occupant of a structure or area, with required fire department access as specified in 10.12.1. or 10.12.2, shall notify the AJH when the access is modified in a manner that could prevent fire department access.

26. The Citrus County Board of County Commissioners adopted Section 4247 within Chapter Four of the Land Development Code. Chapter Four is entitled, “Mandatory Use, Design Standards, and Development Criteria.” Subchapter 4200 within Chapter Four is entitled “Transportation System Standards,” and Section 4240, within which the 4247 is found, is entitled “Right’s of Way.” Section 4247 states:

4247 Key Box Access

A. A key box shall be installed on the entrance gate and/or structures to allow immediate access necessary for life saving and/or fire fighting purposes for the following businesses:

1. Involving recovery, recycling, or reuse of combustible or hazardous materials and;
2. All commercial occupancies over 5,000 sq ft and/or with two or more occupancies and;
3. All gated communities
4. Facilities with 24/7 onsite personnel are exempt from this provision.

B. The key box shall be a type approved by the Fire Rescue Division and shall contain:

1. Keys to locked points of ingress, whether on the interior or exterior of such building;

³ Rule 69A-60.002(3)(a), *Florida Administrative Code*.

2. Keys to locked mechanical equipment rooms;
 3. Keys to locked electrical rooms;
 4. Keys to elevator controls; and
 5. Keys to other areas as directed by the fire chief.
- C. If at any time the keys stored in the lock box change, then the building owner or manager is to notify the Fire Rescue Division and supply new keys to the Fire Rescue Division. The Fire Rescue Division shall approve the location of lock boxes.

27. Section 4247 states on its face that the requirement of a key box is for “life saving and/or firefighting purposes.” Section 633.025, *Florida Statutes*, authorizes Citrus County to adopt more stringent firesafety standards than those deemed adopted in FFPC, however, the adoption is subject to “the requirements of this subsection.”⁴ Neither Rule 69A-60, *Florida Administrative Code*, nor Chapter 633, *Florida Statutes*, define the phrase “more stringent firesafety standards;” therefore, by the rules of statutory construction, the words will be interpreted by their ordinary meaning. The dictionary meaning of the term “stringent” is “rigorously binding or exacting; strict; severe.”⁵

28. Section 4247 is more exacting than the FFPC. The FFPC authorizes the AHJ to require access boxes where access is difficult because of security. Section 4247 requires access boxes on specified types of business without regard to an individual difficulty situation. The FFPC allows the AHJ to require fire department access to gated communities through the use of an approved device or system, Section 4247 requires all named business, not just gated communities, to have a key box, and specifies what they must contain. The FFPC authorizes the AHJ to require access boxes in an accessible location; Section 4247 specifies that the Fire Rescue Division shall approve the location of lock boxes. The local ordinance is thus more stringent than the FFPC. Citrus County may have authority to adopt the provision for other than lifesafety and firefighting purposes, but that is the

⁴ Section 633.025(4), *Florida Statutes*.

⁵ *Random House Webster's Unabridged Dictionary*, (Second Edition, New York, 1999) p. 1884.

purpose under which it was enacted; therefore, the procedures provided in Sections 633.025 and 633.0215, *Florida Statutes*, must be utilized.

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

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

2. Section 4247 of Citrus County's Land Development Code constitutes an amendment to the Florida Fire Prevention Code, Section 10.12.

3. The ordinance was not adopted in accordance with Sections 633.025, *Florida Statutes*. Insufficient facts are provided to determine whether the ordinance was adopted in accordance with 633.0215, *Florida Statutes*, although in all likelihood it was not, since Citrus County's position is that the ordinance is not an amendment to the Florida Fire Prevention Code.

4. Citrus County Builders must comply with the Fire Prevention Code, Section 10.12, duly adopted by Citrus County. Section 633.025 (4)(b), *Florida Statutes*, directs the Department to consider if the amendment complies with Section 633.025, *Florida Statutes*.

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, on this _____ day of _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

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