



TOM GALLAGHER  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

In re the Matter of

COLLIER COUNTY FIRE  
CODE OFFICIAL,  
Petitioner.

Case No.: 80325-05-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 received on February 15, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from the Collier County Fire Code Official, hereinafter referred to as Petitioner. 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 for Declaratory Statement. 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 question is being answered purely as a hypothetical one. 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 for Declaratory Statement 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. Petitioner asserts that:

A. There is a building department policy<sup>1</sup> issued February 2, 2005, which affects all previously approved master permits; therefore, it may have an effect on more than 50 active permits.

B. The local building official has issued a local policy regarding handling of revisions to applications to previously approved master plans.

C. The policy fosters and encourages the master filing of permits for any model of building type that uses repetitive design plans.

D. A portion of the policy states, "All revisions to a master file must have the approval of the design professional responsible. Any revision affecting the footprint; building height; egress; any structural, significant mechanical, significant plumbing, or

significant electrical component must be submitted as a revision to the master file and be specific to the permit of the model to be revised. Such revisions must be submitted for Building Department review as required.”

E. The policy has the effect of precluding or exempting review and inspection by the fire official of certain buildings and structures.

#### QUESTIONS:

5. Petitioner’s questions are:

A. Does the building official have the authority to make a determination as to which plans the appropriate fire inspector may review?

B. If so, what plans could be exempt from review by the appropriate fire inspector?

C. May the building official make a determination that the appropriate fire inspector does not need to review a revision to a plan that the appropriate fire inspector previously reviewed and approved?

#### DISCUSSION

6. In ***In re the matter of Casselberry Fire Department, Case No. 39751-01***, dated April 10, 2001, and coordinated with the Florida Building Commission through the Department of Community Affairs,<sup>2</sup> the Department of Financial Services<sup>3</sup> stated:

---

<sup>1</sup> Copy of policy attached to petition but not made a part of this declaratory statement except as quoted herein.

<sup>2</sup> On January 29, 2001.

<sup>3</sup> Then Department of Insurance.

- a. The local fire official must not be subject to, or under the control of, the local building official in matters involving firesafety inspections;
- b. The local building official is not permitted to overrule the local fire official in matters involving firesafety inspections;<sup>4</sup> and
- c. If a dispute arises involving the firesafety code and the building code, the dispute must be resolved in accordance with subsection (7) of Section 553.73, Florida Statutes, and not solely by the building official.

7. While the building official may take all action he or she deems necessary to properly administer his or her duties under the Florida Building Code, no action the building official takes may interfere with, impede, obstruct, or impair the firesafety official in carrying out his or her duties and responsibilities under Chapter 633, Florida Statutes, or Chapter 69A-60, Florida Administrative Code, the Florida Fire Prevention Code.

8. Therefore, the policy statement by the building official is not applicable to the firesafety official unless the firesafety official agrees to such policy statement.

#### DECLARATORY STATEMENT

WHEREFORE, in response to the questions presented in the petition it is the position of the State Fire Marshal that:

9.A. Question A. Does the building official have the authority to make a determination as to which plans the appropriate fire inspector may review?

Response to Question A. No. Plans review, like any firesafety inspection, are governed by Chapter 633, Florida Statutes, and Chapter 69A-60, Florida Administrative Code, the Florida Fire Prevention Code.<sup>5</sup>

---

<sup>4</sup> Inapplicable portion omitted.

B. Question B. If so, what plans could be exempt from review by the appropriate fire inspector?

Response to Question B. Please see the response to question A.

C. Question C. May the building official make a determination that the appropriate fire inspector does not need to review a revision to a plan that the appropriate fire inspector previously reviewed and approved?

Response to Question C. No. Only the firesafety official has the authority to make a determination as to which plans he or she must review under the Florida Fire Prevention Code.

#### 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.

---

<sup>5</sup> Also see *In re the Matter of Miami-Dade, Case No. 35633-00*, which states: "However, pursuant to Section 633.081, Florida Statutes, all firesafety inspections, which includes plans review, must be conducted by a certified firesafety inspector."

ENTERED at Tallahassee, Leon County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2005.

---

Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

Ed Riley, Fire Code Official  
Fire Districts of Collier County  
2800 North Horseshoe Drive  
Naples, Florida 34104

Gabriel Mazzeo, Attorney  
Division of State Fire Marshal  
200 East Gaines Street  
Tallahassee, Florida 32399-0340