



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

APR 14 2010

Docketed by

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In The Matter Of:

STEPHEN M. HODGE

Case No.: 109450-10-FM

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

FINAL ORDER DENYING
PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement ("Petition") from Stephen M. Hodge ("Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal ("Department"), on March 16, 2010. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

BACKGROUND AND FACTS ASSERTED

1. 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.
2. The subject of the Petition is an interpretation of Section 553.73(9)(i), *Florida Statutes*, and National Fire Protection Association ("NFPA") Standard 1-10.1.3.
3. The Petition alleges the following facts:
 - A. A 200 by 20 foot chickee has been built next to, and is overlapping, a restaurant located at 2520 N. Dale Mabry Highway, Tampa, Florida.

B. The restaurant has electrical features on the exterior and restricts exiting only the ends of the chickee.

4. Receipt of the Petition herein was published in Volume 36, Number 13 of the *Florida Administrative Weekly*, on April 2, 2010.

QUESTIONS

5. The Petition poses the following questions:

A. Is it the intent of the statute to allow a chickee to be built next to a building, but not attached to the building, which would cause the chickee to be open only on three sides?

B. Is it the intent of the statute to allow a chickee to cover an existing building that has electrical and/or plumbing features on the exterior of the building where those electrical and/or plumbing features are not attached to the free-standing chickee?

C. Does “open-sided” mean being capable of leaving from under the chickee in any direction?

D. Are railings and other physical obstacles (plants and landscaping) allowed to restrict exiting to only one or both ends of the chickee?

DISCUSSION

6. 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

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

7. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Florida Fire Prevention Code (“Code”), and to update it every three years. National Fire Protection Standard (“NFPA”) 1 “Uniform Fire Code, Florida Edition” is adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special district having firesafety responsibilities.

8. Section 553.73, *Florida Statutes*, authorizes the Florida Building Commission to adopt the Florida Building Code by rule. The Florida Fire Prevention Code is referenced in the Florida Building Code, but it is adopted by the State Fire Marshal.²

9. A chickee, defined at Section 553.73(9)(i), *Florida Statutes*, as “an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features,” is exempt from the Florida Building Code when constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida.

10. NFPA 1-10.1.3. (2006 edition), adopted by reference in Rule 69A-60.003, *Florida Administrative Code*, provides that “where a building code has been adopted, all new construction shall comply with this *Code* [Uniform Fire Code, Florida 2007 Edition] and with the building code.”

11. The Department can opine 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; however, it cannot opine on a statute of another agency. All of Petitioner's questions relate to Section 553.73, *Florida Statutes*, which is administered by the Florida Building Commission, not the Department. Therefore, the Department is without authority to issue a Declaratory Statement that answers Petitioner's questions.

² Section 553.73(1)(c), *Florida Statutes*.

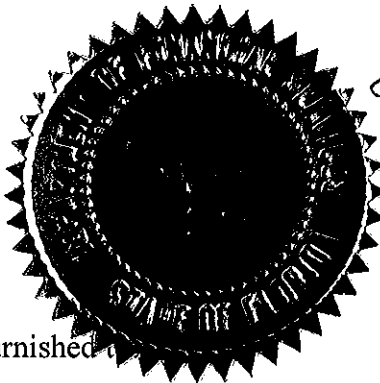
12. NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that the Petition for Declaratory Statement herein is DENIED.

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 Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, 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 14 day of

April, 2010.



A handwritten signature in black ink, appearing to read "Brian London".

Brian London
Deputy Chief Financial Officer

Copies furnished to

Stephen M. Hodge
New Construction Supervisor
City of Tampa Fire Rescue
808 Zack Street
Tampa, Florida 33602

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