



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

APR 5 2010

Docketed by *J.P.*

In The Matter Of:

JOHN REED, Fire Chief
City of Venice, Florida

Case No.: 109130-10-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 John Reed, Fire Chief, City of Venice, Florida ("Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal ("Department"), on February 16, 2010. 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 for sprinkler protection in resort dwellings licensed by the Department of Business and Professional Regulations ("DBPR").

6. The Petition alleges the following facts:

A. In July of 2006 short term rentals (resort dwellings) were discovered to be operating in the City of Venice ("City"). All were operating without proper City permits for zoning, building and fire protection. Three of the resort dwellings operated without proper DBPR licensing until August 7, 2006.

B. The City determined that resort dwellings were not a permitted use under the City's zoning code; the decision was challenged in Court.

C. On March 17, 2009, the Court overturned the City's determination. Rather than appeal the Court's decision, the parties entered into a settlement agreement which

provided, in part, "Plaintiff's shall have 180 days to bring the properties into compliance with the provisions of Chapter 69A-43, *Florida Administrative Code*."

D. On January 25, 2010, the City received a communication from a local engineer on behalf of the property owner stating that all the properties had been reviewed and all were in compliance.

E. Twelve distinct properties are involved; all were licensed as resort dwellings by DBPR in 2006, and all are either one or two family dwellings.

7. No litigation is currently pending on this matter.

8. Receipt of the Petition herein was published in Volume 36, Number 10 of the *Florida Administrative Weekly*, on March 12, 2010.

QUESTIONS

9. The Petition poses the following questions:

A. Which edition of the Code is to be used to determine compliance when the plans and specifications are submitted for plan review?

B. Is the answer based upon the date of licensure by the Department of Business and Professional Regulations?

C. Is the answer based upon Rules 69A-43 and 69A-3.012, *Florida Statutes*?

D. Shall an automatic sprinkler system be required? If so, which specific edition of the Code is to be used for the plan review?

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 to 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 municipality, county, and special districts having firesafety responsibilities.

12. Rule Chapter 69A-43, *Florida Administrative Code*, applies to transient public lodging establishment licensed by DBPR. A resort dwelling is a subset of transient public lodging establishments.² Since each of the subject properties is licensed as a transient public lodging establishment by DBPR, the rule applies to all of the subject properties.

13. Rule 69A-43.018, *Florida Administrative Code*, provides that one and two family dwellings licensed by DBPR as public lodging establishments must comply with NFPA 101-24, One-Family and Two-Family Dwellings, as adopted in Chapter 69A-3, *Florida Administrative Code*.

14. The 2003 edition of NFPA 101-24, in effect when the subject properties were initially licensed by DBPR, did not contain an automatic sprinkler system requirement. In conjunction with Rule Chapter 69A-43, the 2006 edition of NFPA 101-24, currently in effect, requires all new or significantly modified licensed resort dwellings to be protected throughout by an

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

² Section 509.242(1), *Florida Statutes*.

approved automatic sprinkler system. The requirement does not apply to existing licensed resort dwellings.

15. Since the subject properties were licensed by DBPR prior to the adoption of the current Code on December 31, 2008, the 2003 requirements of NFPA 101-24 apply. One or two family dwellings need not be protected throughout by an automatic sprinkler system.

16. 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. Which edition of the Code is to be used to determine compliance when the plans and specifications are submitted for plan review?

Answer: The sprinkler requirements contained in NFPA 101-24, 2003 edition.

Question B. Is the answer based upon the date of licensure by the Department of Business and Professional Regulations?

Answer: Yes.

Question C. Is the answer based upon Rules 69A-43 and 69A-3.012, *Florida Statutes*?

Answer: Yes.

Question D. Shall an automatic sprinkler system be required? If so, which specific edition of the Code is to be used for the plan review?

Answer: No, an automatic sprinkler system is not required.

NOTICE OF RIGHTS

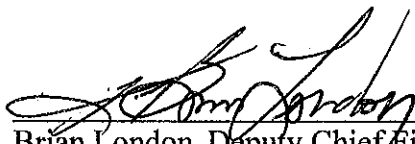
Any party to these proceedings adversely affected by this Declaratory Statement is entitled to

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 5 day of

April, 2010.





Brian London, Deputy Chief Financial Officer

Copies furnished to:

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