



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

ED RILEY

Case No.: 112535-10-FM

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

FILED

NOV 5 2010

DECLARATORY STATEMENT

Docketed by 

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") from Ed Riley, (hereinafter "Petitioner"), filed with the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on September 10, 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. The Petitioner is the fire code official for Collier County Fire Control & Rescue Districts, charged with enforcement of Rule 69A-60, *Florida Administrative Code*, the “Florida Fire Prevention Code” (hereinafter the “Code”).

5. This Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Chapter 28.105, *Florida Administrative Code*, which authorize 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.

6. The subject of the Petition is fire protection for vertical openings as set forth in NFPA 101-38.3.1.1(1) and 101-8.6.8.2(3), of the Code.

7. The subject structure is located at 1450 Merrihue Drive, Naples, Florida 34102.

8. The subject structure is a three-story, Type II-B, single tenant business occupancy that is to be protected with an automatic fire sprinkler system and a fire alarm system. The ground level of the subject property is comprised primarily of parking spaces, storage rooms, an elevator, an elevator lobby, and two fire resistant rated enclosed exit stairways that extend from the ground level through the third level.

9. The second level of the subject structure is comprised mostly of offices along the perimeter walls. The central core at this level includes office cubicles, a lobby area, and an unenclosed stairway which are all open to the third level. There are two enclosed stairways accessible from this level.

10. The third level of the subject structure is comprised of offices along the perimeter wall. The central core of the structure on this level includes a conference room, the unenclosed stairway down to the second level, and open areas over the office cubicles and lobby below. The same two enclosed stairways are accessible from this level.

11. Notice of receipt of the Petition herein was published in Volume 36, Number 39 of the *Florida Administrative Weekly*, on October 1, 2010, and discussed at a duly noticed public meeting of the Florida Fire Code Advisory Council on October 14, 2010.

QUESTIONS

12. The Petition poses the following questions:

A. Do the unenclosed vertical openings between the second and third levels, as outlined above and as designed in the referenced exhibits provided (i.e., without separation between the egress system and the unenclosed vertical openings), comply with the intent of the NFPA 101-8.6.8.2(3), adopted in the Code?

B. If the answer is no, then are the unenclosed vertical openings between the second and third levels, as outlined above and as designated in the referenced exhibits provided, required to comply with the intent of NFPA 101-8.6.8.2(3), adopted in the Code?

C. If the answer is yes, must the "separation" in this fully sprinklered building, required by NFPA 101-8.6.8.2(3) of the Code, be a fire resistant rated barrier in

accordance with subsections 8.6.2 and 8.6.5, or a smoke barrier in accordance with subsection 8.5, or a smoke partition in accordance with subsection 8.4?

DISCUSSION

13. The Department is authorized pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements. The Department is required to issue Declaratory Statements relating to the Code when requested by a substantially affected person or a local enforcing agency, pursuant to Section 633.01(6), *Florida Statutes*.

14. The Department adopted the 2006 edition of NFPA 101, the “Life Safety Code” by reference in Rule 69A-60.003, *Florida Administrative Code*, as part of its triennial update of the Code.

15. While the exhibits supporting this Petition do not delineate specific areas of the building as ‘corridors’, the two enclosed stairways on each level can only be accessed by a channelized flow around the central core of the building. This channel on both levels comprises the complete system of exit access; therefore, the occupants on the second and third levels must traverse one or more unprotected vertical openings to exit the structure.

16. The phrase, ‘exit access’ is defined at NFPA 101-3.3.71 as “that portion of a means of egress that leads to an exit.” NFPA 101-38.3.1.1 relates to protection of means of egress in new business occupancies and provides that, “vertical openings shall be enclosed or protected in accordance with Section 8.6 unless otherwise permitted . . . in accordance with 8.6.8.2.”

17. NFPA 101.8.6. relates to vertical openings and provides at 101-8.6.8.1 that:

Every floor that separates stories in a building shall meet the following criteria: (1) It shall be constructed as a smoke barrier in accordance with

Section 8.5. (2) It shall be permitted to have openings as described by 8.6.6, 8.6.7, 8.6.8, or Chapter 11 through Chapter 42.

NFPA 101-8.6.8.2, relating to convenience openings, provides that a “vertical opening serving as other than an exit enclosure, connecting only two adjacent stories and piercing only one floor shall be permitted to be open to one of the two stories.” NFPA 101-8.6.8.2(3) states that such “openings shall be separated from corridors.”

18. The term ‘separation’ used above can be accomplished in several ways under the Code. NFPA 101-8.2 requires that openings through floors be enclosed with fire barrier walls that are continuous from floor to floor or floor to roof, and protected as appropriate for the fire resistance rating of the barrier. NFPA 101-8.6.5 sets forth the fire resistance ratings. NFPA 101-8.5 describes a variety of smoke barrier conditions, while NFPA 101-8.4 sets forth requirements regarding smoke partitions.

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

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

2. Question A. Do the unenclosed vertical openings between the second and third levels, as outlined above and as designed in the referenced exhibits provided (i.e., without separation between the egress system and the unenclosed vertical openings), comply with the intent of the NFPA 101-8.6.8.2(3), of the Code?

Answer: No, because the unenclosed vertical openings are not separated from the corridors.

Question B. If the answer is no, then are the unenclosed vertical openings between the second and third levels, as outlined above and as designated in the referenced exhibits provided, required to comply with the intent of NFPA 101-8.6.8.2(3), of the Code?

Answer: Yes, the area around the central core of the building's second and third levels function in the same manner as corridors and therefore constitutes the 'exit access' component of the means of egress. Occupants within the exit access cannot effectively use the exit access without being exposed to one or more unprotected vertical openings which is prohibited by the section noted in the question.

Question C. If the answer is yes, must the "separation" in this fully sprinklered building, required by NFPA 101-8.6.8.2(3) of the Code, be a fire resistant rated barrier in accordance with subsections 8.6.2 and 8.6.5, or a smoke barrier in accordance with subsection 8.5, or a smoke partition in accordance with subsection 8.4?

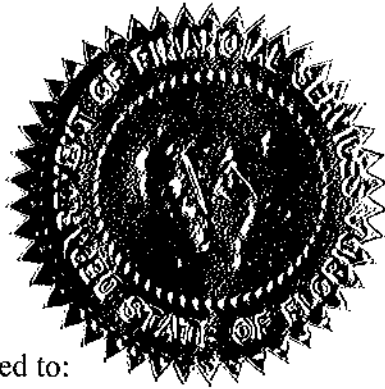
Answer: The separation may be a smoke barrier in accordance with NFPA 101-8.6.2 and 101-8.6.5, or a smoke partition in accordance with NFPA 101-8.4.

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, at 612 Larson Building, Tallahassee, Florida, 32399-0333 or emailed to Julie.Jones@myfloridacfo.com. A copy of the same must be filed with the appropriate

district court of appeal. The Notice must be filed within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this 5 day of November, 2010.



A handwritten signature in black ink, appearing to read "Ben Diamond".

Ben Diamond
General Counsel

Copies furnished to:

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