



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In re the Matter of

SILK OAK, LLC,

Petitioner.

Case No.: 78581-04-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 September 28, 2004, by the Department of Financial Services, hereinafter referred to as the Department, from Silk Oak, LLC, 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. Petitioner is seeking a review of the applicability and interpretation of NFPA 501 and NFPA 501A, Subdivision 4-3.5.2, all of which were adopted by the State Fire Marshal pursuant to Section 633.022, Florida Statutes, and Florida Administrative Code Rule 4A-42, to an approximately 40-year old mobile home park owned by Petitioner-Silk Oak Lodge.

B. Petitioner has been cited by the Dunedin Fire Marshal for violating Section 633.022, Florida Statutes, and is requesting that Petitioner “provide fire hydrants every 500 ft. in the mobile home park.”

C. Pursuant to a letter from Petitioner's counsel to a Dunedin Deputy Fire Marshal, Petitioner questioned the validity of the request and asked for clarification on which NFPA Standard required Petitioner to retrofit the entire Park with fire hydrants "every 500 feet."

D. In response, Petitioner's counsel received a facsimile transmission which reveals that the Dunedin Fire Marshal is basing his position primarily on NFPA 501A, Subdivision 4-3.5.2

E. Because of the age of the Park, fire hydrants are not located "every 500 feet" in the Park and there are not sufficient water lines to support such fire hydrants.

F. If Petitioner were required to comply with the Dunedin Fire Marshal's request, it would be extremely costly to Petitioner with a very small increase in safety for the Park residents because the Park is an old mobile home park that has been in existence since approximately 1965, which predates the adoption of NFPA 501A by decades.

G. Dunedin Fire Marshals believe that the newly adopted NFPA 501A can be retroactively applied to the Park.

H. The question involves the interpretation and applicability of the newly adopted version of NFPA 501A, 1999 edition, to existing mobile home parks. NFPA 501A, 1999 edition, Subdivision 4-3.5.2, states that: "*Where provided*, hydrants shall be

located along community streets or public ways within 500 feet (152.4 m) of all homes and buildings and installed in accordance with NFPA 24....” (Emphasis added).

I. The Dunedin Fire Marshal has cited Petitioner for failing to comply with Section 633.022, Florida Statutes (specifically NFPA 501A). Petitioner takes the position that all statutes and administrative rules that implement such statutes must operate prospectively unless specific authority is granted to the contrary in the state statute.

J. The Park was built in 1965 and NFPA 501A does not state that it is to be applied retroactively to existing mobile home parks. Therefore, Petitioner argues that Petitioner should not have to comply with the Dunedin Fire Marshal’s request.

K. Furthermore, even it is determined that NFPA 501A applies retroactively to the Park, Petitioner does not believe, based on the wording of NFPA 501A, that Petitioner is required to install water lines and retrofit the Park with “fire hydrants every 500 ft.”

L. Petitioner’s position in this regard is based on the words “where provided” contained in NFPA 501A, Subdivision 4-3.5.2.

M. Petitioner previously communicated with the State Fire Marshal’s Office on these issues and received an e-mail response.

N. Petitioner now needs a formal opinion on these issues from the Department of Financial Services, Division of State Fire Marshal, given the latest citation received from the Dunedin Fire Marshal.

QUESTIONS:

5.A. Whether NFPA 501 and NFPA 501A, and specifically Subdivision 4-3.5.2, require mobile home parks that have been in existence prior to the adoption of such Standards by the State Fire Marshal to retrofit their entire communities with “fire hydrants every 500 ft”?

B. Additionally, to what extent and how is the Park governed by NFPA 501 and NFPA 501A?

DISCUSSION

6. Since the local fire marshal appears to rely on the language of the Florida Fire Prevention Code, this declaratory statement is based on the assumption that there is no local ordinance amending the Florida Fire Prevention Code to apply to the Petitioner and thus NFPA 501A-1999 controls. Where there is no local adopted requirement for fire department water supply, the park can meet the requirement for water supply in one of three ways:

7. NFPA 501A-1999 states in part:

4-3.5 Water Supplies for Fire Protection — Minimum Requirements.

4-3.5.1 The [water] supply shall be permitted to be derived from the following

- (1) Hydrants connected to an underground water supply system
- (2) Reservoir or water supply with a source not less than 3000 gal (11,360 L) (accessible fire department drafting operations)
- (3) Fire department apparatus equipped with a water tank(s) with a capacity of 750 gal (2840 L) and a pump capacity of 250 gpm (16 L/sec), constructed in accordance with NFPA 1901, *Standard for Automotive Fire Apparatus*

8. NFPA 501A-1999, Subdivision 4-3.5.2, states:

Where provided, hydrants shall be located along community streets or public ways within 500 ft (152.4 m) of all homes and buildings and shall be readily accessible for fire department use. Hydrant-hose coupling threads shall be national standard threads or shall conform to those used by the local fire department if different from those specified in NFPA 1963, *Standard for Fire Hose Connections*.

(All emphases supplied).

9. NFPA 501A, 1999 edition, provides that “water supplies” shall be as required by the authority having jurisdiction but if the authority having jurisdiction has no requirements, one of the above three means in paragraph 7 shall be permitted to be used.

10. If the local authority having jurisdiction wanted to apply a more stringent requirement, it would be required to adopt a local ordinance in accordance with Section 633.0215 or Section 633.025, Florida Statutes.

11. Section 633.01, Florida Statutes, states in part that

Rules shall be in substantial conformity with generally accepted standards of firesafety...shall balance and temper the need of the State Fire Marshal to protect all Floridians from fire hazards with the social and economic inconveniences that may be caused or created by the rules.”

12. For local governments (counties, municipalities, or special fire control districts) which are required to enforce the Florida Fire Prevention Code, that provision requires that such local governments, as well as the State Fire Marshal, balance and temper the need of the local government to protect all of its residents from fire hazards with the social and economic inconveniences that may be caused by the local government’s rulings.

13. The second sentence of Section 69A-42.002, Florida Administrative Code, says, “These rules try to avoid requirements that might result in unreasonable hardships or unnecessary inconveniences or interference with the normal use of the facilities.”

14. The City of Dunedin must permit the mobile home park owner to choose one of the means provided in Subdivision 4-3.5.1 of NFPA 501A-1999, because of the mandatory words, “The [water] supply shall be permitted to be derived from the following...” That means that if one of the three following conditions exists, the water supply requirement has been met:

A. “Hydrants connected to an underground water supply system”

B. “Reservoir or water supply with a source not less than 3000 gal (11,360 L) (accessible fire department drafting operations)” or

C. “Fire department apparatus equipped with a water tank(s) with a capacity of 750 gal (2840 L) and a pump capacity of 250 gpm (16 L/sec), constructed in accordance with NFPA 1901, *Standard for Automotive Fire Apparatus*.”

15. Therefore, while there is no obligation on the part of a local government to provide one or more of the conditions quoted in 14.A., B., or C., IF one or more of the conditions exist it or they may be relied upon by the mobile home park.

16. Finally, Section 633.01(4), Florida Statutes, states:

It is the intent of the Legislature that the rules promulgated by the State Fire Marshal pursuant to this section be enforced in such a manner as to prohibit the displacement of currently placed mobile homes unless there is a threat of imminent danger to the health, safety, or welfare of the general public.

17. While it is laudable that the authority having jurisdiction is attempting to enforce the firesafety standards with evenhanded application, the circumstances of this situation simply do not rise to the level of being “a threat of *imminent danger* to the *health, safety, or welfare* of the general public.” For that reason, the residents of the currently placed mobile homes should not be displaced with a requirement that would necessitate such a large economic burden.

DECLARATORY STATEMENT

WHEREFORE, it is the position of the State Fire Marshal that:

Question: Whether NFPA 501 and NFPA 501A, and specifically Subdivision 4-3.5.2, require mobile home parks that have been in existence prior to the adoption of such Standards by the State Fire Marshal to retrofit their entire communities with “fire hydrants every 500 ft”?

Response: No. The Petitioner may meet the requirements by complying with one of the three alternatives established in NFPA 501A, 1999 edition, Subdivision 4-3.5.1. Even if the Petitioner did not have the choice in Subdivision 4-3.5.1 of NFPA 501A, 1999 edition, the phrase “where provided” in Subdivision 4-3.5.2 of NFPA 501A-1999, means that where fire hydrants have been previously provided in the mobile home park they must be spaced within 500 feet of all homes and buildings or at approximately 1,000 foot intervals. It is not applicable to a situation such as this one in which there are no fire hydrants at all.

Question: Additionally, to what extent and how is the Park governed by NFPA 501 and NFPA 501A?

Response: NFPA 501 and 501A govern the mobile home park to the extent recited in this declaratory statement, and in all other respects, subject, however, to the provisions in the Florida Constitution, Chapter 633, Florida Statutes, and the applicable rules of the Department of Financial Services.

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 at Tallahassee, Leon County, Florida, this ____ day of _____, 2004.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

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