



In The Matter Of:

Slaughter Construction Co., Inc.

Case No.: 97276-08-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 (hereinafter “Petition”) from Slaughter Construction Co., Inc. (hereinafter “Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on August 12, 2008. 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 Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, Chapter 28.105, and Rule 69A-60.007, *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.

5. The subject of the Petition is the application of the phrase "fire protection system" to the installation of the project described in 6.A., which follows.

6. The Petition alleges the following facts:

A. Petitioner was the lowest bidder with a valid Category V fire protection system license under Section 633.021(5)(e), *Florida Statutes*, on a request for bids issued by the Town of Pomona Park, Florida (hereinafter, "Town") for construction of a project entitled "CDBG 07 NR Fire Protection System Phase 2 (hereinafter "the Project").

B. The Project consisted solely of the construction of approximately 13,500 linear feet of non-potable underground fire main and 15 fire hydrants connecting to the non-potable fire main.

C. Petitioner protested the award of the contract by the Town to another contractor because that contractor is not a licensed fire protection system contractor.

D. The Town denied Petitioner's protest on the basis that the Project was not a fire protection system, because the Town intended for the Project to later "become a precursor for domestic use within the town." The Town's decision was based, at least in part, on a preliminary review by the State Fire Marshal's Office, Bureau of Fire Protection, of the plans for the Project

and the following preliminary determination in a July 9, 2008, letter from the Fire Marshal's office to Petitioner providing that: "if the line outlined in the documents you supplied is intended to be used exclusively for a fire protection system, then that line must be installed by a certified fire protection system contractor. However, if the line outlined in the documents is a precursor to domestic use, the line is not required to be installed by a certified protection system contractor."

E. The Project consists of the proposed construction of approximately 13,500 linear feet of non-potable underground fire main and fifteen fire hydrants on W. Main Street, E. Main Street and Pleasant Street in the Town of Pomona Park, Florida, 32181. There are several homes on the streets which will be served by the fire main and fire hydrants.

7. Counsel for Petitioner has confirmed that no litigation is pending on this matter.

8. Receipt of the Petition herein was published in Volume 34, Number 35 of the *Florida Administrative Weekly*, on August 29, 2007. Petitioner has waived the 90 day period within which to enter the Declaratory Statement.

QUESTIONS

9. The Petition poses the following questions:

A. Whether the Project, which as constructed, will consist solely of non-potable underground fire main and fire hydrants, without any connection to any potable water source and no other function as constructed other than to provide non-potable water to the fire hydrants, constitutes a "fire protection system" under Subsection 633.021(9), *Florida Statutes*, so that the Project installation must be performed by a contractor with a Category V fire protection system license pursuant to Subsection 633.021(5)(e), *Florida Statutes*.

B. Are the determinations of whether the Project constitutes a “fire protection system” under Subsection 633.021(9), *Florida Statutes*, and of the location of the “point of service” as defined in Subsection 633.021(19), *Florida Statutes*, based on the actual use of the Project as constructed, or do Subsections 633.021(9) and (19), *Florida Statutes*, allow for the consideration of the potential future planned, but not yet designed or funded, domestic use of the Project in making these determinations?

C. What does it mean for an underground water main to be a “precursor to domestic use” as described in the enclosed July 9, 2008, letter to Petitioner from the Department’s Bureau of Fire Protection?

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.

11. Section 633.539, *Florida Statutes*, requires that fire protection systems can only be installed by contractors certified under Section 633.521, *Florida Statutes*. Certificates are issued in the categories of Contractor I, II, III, IV, and V. Subsection 633.539(3), *Florida Statutes*, provides:

For contracts written after June 30, 2005, the contractor who installs the underground piping from the point of service is responsible for completing the installation to the aboveground connection flange, which by definition in this chapter is no more than 1 foot above the finished floor, before completing the Contractor's Material and Test Certificate for Underground Piping document. Aboveground contractors may not complete the Contractor's Material and Test Certificate for Underground Piping document for underground piping or portions thereof which have been installed by others.

12. The phrase “point-of-service” is defined at Subsection 633.021(19), *Florida Statutes*, as, “the point at which the underground piping for a fire protection system as defined in this section using water as the extinguishing agent becomes used exclusively for the fire protection system.” (Emphasis added.)

13. The term “fire protection system” is defined in Subsection 633.021(9), *Florida Statutes*, as:

a system individually designed to protect the interior or exterior of a specific building, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, CO₂ systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, and tanks and pumps connected to fire sprinkler systems. (Emphasis added.)

14. Subsection 633.021(5)(e), *Florida Statutes*, defines the term "Contractor V" to mean:

a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

15. According to the Petition, the Project consists entirely of 13,500 linear feet of non-potable underground fire main and 15 fire hydrants. The term “potable” means “suitable for drinking.”¹

16. The installation of underground fire mains and fire hydrants can constitute the installation of a fire protection system when connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with sprinkler systems, and tanks and pumps connected to fire sprinkler systems that are “designed to protect the interior or exterior of

a specific building, structure, or other special hazard from fire.”² In such a case, the installer must be a licensed contractor.

17. The point-of-service is the point at which the water is diverted for the **exclusive** use of the fire sprinkler or other fire protection system. That definition is not relevant to this discussion; however, because it is concluded that the project does not constitute a fire protection system in that it is not designed to protect a specific structure, building or fire hazard.

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

1. The parties are substantially affected persons entitled to the issuance of this Declaratory Statement.

2. Questions and Response

Question A. Whether the Project, which as constructed, will consist solely of non-potable underground fire main and fire hydrants, without any connection to any potable water source and no other function as constructed other than to provide non-potable water to the fire hydrants, constitutes a “fire protection system” under Subsection 633.021(9), *Florida Statutes*, so that the Project installation must be performed by a contractor with a Category V fire protection system license pursuant to Subsection 633.021(5)(e), *Florida Statutes*.

Answer: No. A fire protection system is a system individually designed to protect the interior or exterior of a specific building, structure, or other special hazard from fire. Installation by a Contractor V is required from the point of service to a point not more than one foot above the finished floor. The subject project does not yet serve a specific building, structure, or other special hazard.

¹ Webster’s Unabridged Dictionary, Second Edition, Random House, New York (1998), P.1513.

² Subsection 633.021(9), *Florida Statutes*.

Question B. Are the determinations of whether the Project constitutes a “fire protection system” under Subsection 633.021(9), *Florida Statutes*, and of the location of the “point of service” as defined in Subsection 633.021(19), *Florida Statutes*, based on the actual use of the Project as constructed, or do Subsections 633.021(9) and (19), *Florida Statutes*, allow for the consideration of the potential future planned, but not yet designed or funded, domestic use of the Project in making these determinations?

Answer: The answer, as it applies to Petitioner’s specific circumstances, is set forth in the answer to Question A. To the extent the question requests the answer to a hypothetical question, or question of general applicability, the Department is not authorized by Section 120.565, *Florida Statutes*, to answer in a Declaratory Statement.

Question C. What does it mean for an underground water main to be a “precursor to domestic use” as described in the enclosed July 9, 2008, letter to Petitioner from the State Fire Marshal’s Office, Bureau of Fire Protection?

Answer: The quoted phrase from the Department’s letter means that the underground water main does not constitute a fire protection system under the factual circumstances set forth in the Petition, as explained in the answer to Question A, above.

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 in the City of Tallahassee, Leon County, Florida, on the _____ day of _____, 2009.

Brian London
Deputy Chief Financial Officer

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