



REPRESENTING
CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA
STATE FIRE MARSHAL

In The Matter Of:

STEVEN J. WOLK,

Petitioner,

Case No.: 112798-10-FM

And

ORANGE COUNTY, FLORIDA,

Intervener.

FILED

JAN 18 2011

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

Docketed by

A handwritten signature in black ink, appearing to be "JP", written over a horizontal line.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed with the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on November 15, 2010, by Steven J. Wolk (hereinafter "Petitioner"). Orange County, Florida, requested a full opportunity to file a written response to the Declaratory Statement. 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 as supplemented by the Petitioner, and pictures of the subject property taken by the Department. 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 and response contain 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 the parties may be entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. The Petitioner received an adverse ruling from the appeals board of the authority having jurisdiction, Orange County, Florida.

5. The Petitioner filed a Petition for Declaratory Statement 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. Orange County timely responded.

6. The subject of the Petition is fire alarm requirements of National Fire Protection Association ("NFPA") 101-31.3.4.1 and Section 69A-633.0215(14), *Florida Statutes*, as applied to the Petitioner's apartment building ("subject building").

7. The subject building is a 22-unit, two-story apartment building located at 3569 Khayyam Avenue, Orlando, Florida 32826. The doors to all of the ground-floor units in the building face the

front of the building and open directly to an outside sidewalk that runs along the front of the building. Most of the upstairs units in the building face 'sideways' with the doors to each adjoining pair of upstairs units facing each other and opening onto a single landing leading to a staircase running down to ground level between the two ground-floor units below them and emptying onto the same outside sidewalk in front of the building.

8. A fire alarm system was not installed in the subject building at the time of construction in 1973, and never subsequently installed. The subject building has been in continuous operation as an apartment building for 37 years.

9. On August 1, 2007 and August 13, 2007, Orange County cited Petitioner for failure to have a fire alarm system in the building as required by NFPA 101-31.3.4.1.1, and subsequently brought code enforcement proceedings before the special magistrate for the Orange County Code Enforcement Board on December 3, 2007. The County affirmed the citation, required Petitioner to install a fire alarm system by June 2, 2008, and fined him \$250.00 per day for each day thereafter that the fire alarm system was not installed.

10. Petitioner appealed the order to the Circuit Court for the Ninth Judicial Circuit pursuant to Section 162.11, *Florida Statutes*. The Circuit Court reversed and remanded the matter back to Orange County. Orange County reaffirmed and Petitioner filed a Petition for Writ of Certiorari.

11. On September 14, 2010, the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, transferred case number 2010-CA-15116-O, *Steven J. Wolk, et al. v. Orange County, Florida*, to the Division of State Fire Marshal. The cited authority for the transfer is Section 18-34(p) of the *Orange County Code*, which authorizes appeal of a final order of the Orange County Fire and Life Safety Code Board of Adjustments and Appeals ("Board") to the Division of State Fire Marshal, and Florida Rule of Appellate Procedure 9.040(b)(1). An initial order setting forth the

authority of the Department resulted in the Petition filed herein. Orange County, Florida, filed an Answer to the Petition on December 20, 2010.

12. Notice of receipt of the Petition herein was published in Volume 36, Number 52 of the *Florida Administrative Weekly*, on December 30, 2010.

QUESTIONS

13. The Petition poses the following questions:

A. Is the subject building exempted from the requirement that it have a fire alarm system by the exception set forth in NFPA 101-31.3.4.1.2?

B. Is the subject building exempted from the requirement that it have a fire alarm system by the provisions of Section 633.0215(14), *Florida Statutes*?¹

DISCUSSION

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

15. 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.

16. NFPA 101-31.3.4.1, relating to the fire alarm requirements of existing apartment buildings, provides:

Apartment buildings with more than three stories or with more than 11 dwelling units, other than those meeting 31.3.4.1.2 or 31.3.4.1.3, shall be provided with a fire alarm system in accordance with Section 9.6, except as modified by 31.3.4.2 through 31.3.4.5.2.

NFPA 31.3.4.1.2 provides:

¹ The Department is without authority to grant or deny Petitioner’s request to declare the Board’s order of June 1, 2010 void.

A fire alarm system shall not be required where each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than ½ hour, and where each dwelling unit has either its own independent exit or its own independent stairway or ramp discharging at grade.

17. Section 633.0215(14), *Florida Statutes*, effective July 1, 2010, provides:

A condominium that is one or two stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.

18. A second amendment to 633.0215(14), *Florida Statutes*, effective July 1, 2010, was also enacted and placed in the footnote of the first by the Office of Statutory Revision; it provides:

A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s. 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.²

19. The term “apartment building” is defined at NFPA 101.3.3.28.3 as a “building or portion thereof containing three or more dwelling units with independent cooking and bathroom facilities.” The phrase “residential building” is not defined in *Florida Statutes*; however, the Code addresses firesafety requirements by type of occupancy, defined at NFPA 101-3.3.168 as, “the purpose for which a building or other structure, or part thereof, is used or intended to be used.” The subject property is treated as a ‘residential occupancy,’ defined at NFPA 101-3.3.168.13, as an “occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional.” The subject property is a “multifamily residential building.”

20. Section 1.04, *Florida Statutes*, requires that acts “passed during the same legislative session and amending the same statutory provision are in pari materia, and full effect should be given to

² NFPA 101-9.6 sets forth the fire detection, alarm and communications systems requirements when such is required by another section of the Code.

each, if that is possible.” As the first enactment is not applicable to the facts of this Petition, the second enactment will be applied.

21. The phrase “means of egress” is defined in NFPA 101-3.3.151 of the Code as “a continuous and unobstructed way of travel from any point in a building or structure to a public way consisting of three separate and distinct parts: (1) the exit access, (2) the exit, and (3) the exit discharge.”³ The phrase “exit access” is defined at NFPA 3.3.71 of the Code as “that portion of a means of egress that leads to an exit.”⁴ The phrase “exit” is defined at NFPA 101-3.3.70 of the Code as “that portion of a means of egress that is separated from all other spaces of a building or structure by construction or equipment as required to provide a protected way of travel to the exit discharge.” The phrase “the exit discharge” is defined at NFPA 101-3.3.72 of the Code as “that portion of a means of egress between the termination of an exit and a public way.” An “exterior means of egress” as used in Section 633.0215(14), *Florida Statutes*, is one where all three elements, the exit access, the exit, and the exit discharge, are located on the exterior of the building.

22. The phrase, “exterior stairway” is not defined in the Code; however, NFPA 101-3.1 of the Code provides, that “where terms are not defined in this chapter or within another chapter, they shall be defined using the definition within the Florida Building Code.” The 2007 Florida Building Code: Building, Section 1002.1, defines the term “exterior stairway” as a “stairway that is open on at least one side, except for required structural columns, beams, handrails and guards. The adjoining open areas shall be either yards, courts or public ways. The other sides of the exterior stairway need not be open.” Section 633.025(1), *Florida Statutes*, deems adopted the Florida Building Code in

³ The explanatory material found at A.3.3.151 explains that a “means of egress comprises the vertical and horizontal travel and includes intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, elevators, enclosures, lobbies, escalators, horizontal exits, courts, and yards.”

⁴ The explanatory material found at A.3.3.70 explains that exits include “exterior exit doors, exit passageways, horizontal exits, exit stairs, and exit ramps. In the case of a stairway, the exit includes the stair enclosure, the door to the stair enclosure, stairs and landings inside the enclosure, the door from the stair enclosure to the outside or to the level of exit discharge, and any exit passageway and its

conjunction with the Florida Fire Prevention Code in each municipality, county, and special district with firesafety responsibilities.

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

1. The Petitioner and Intervener are substantially affected and entitled to the issuance of this Declaratory Statement.

2. Question A: Is the subject building exempted from the requirement that it have a fire alarm system installed by the exception set forth in NFPA 101-31.3.4.1.2?

Answer: No. Two requirements must be met to qualify for the exemption. First, the dwelling unit must be separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than one-half hour. This criterion was not addressed in the Petition. Second, each dwelling unit must have an independent exit or stairway discharging at grade. Photographs of the building along with the description in the Petition indicate that two units share the same independent stairway or ramp discharging at grade.

Question B: Is the subject building exempted from the requirement that it have a fire alarm system installed by Section 633.0215(14), *Florida Statutes*?

Answer: No, the stairway is not an exterior stairway as defined in the Florida Building Code. Therefore, the building is not constructed with an exterior means of egress.

NOTICE OF RIGHTS

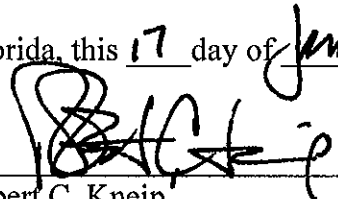
Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement

associated doors, if such are provided, so as to discharge the stair directly to the outside. In the case of a door leading directly from the street floor to the street or open air, the exit comprises only the door.”

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, 32399-9333, by email addressed to Julie.Jones@myfloridacfo.com, and by facsimile sent to 850-488-0697. A copy of the same notice must be filed 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, this 17 day of January, 2011.





Robert C. Kneip
Chief of Staff

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