From the Desk of Charles M. Kramer, Esq., Benson Mucci & Weiss P.L.

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LEGAL ADVISORY OPINION AS TO REQUIREMENTS FOR FIRE SAFETY INSPECTIONS AT TRANSITIONAL/ RECOVERY COMMUNITY RESIDENCES

Issue

You have asked your attorney if a local fire department has the authority to perform fire safety inspections at single or two family homes which have undergone a change in use to a transitional/ recovery home. More specifically, you have asked if "Fire Prevention for the City of Oakland Park has the right to do inspections within the homes and do they have to comply with the Florida fire code and local fire provisions." You have provided a copy of The Copy of Oakland Park Ordinance 0-2020-XXXX for reference.

We advise as follows and note that the determinations contained in this Advisory are not limited to the City of Oakland Park.

Rule:

It is a concern that operators for transitional and recovery community homes which have been converted from single or two family homes may attempt to cite Florida Statutes for the purpose of avoiding Fire Code and fire safety inspections. By way of example Sec 553.79 (13) for states *inter alia* :

> (13) One-family and two-family detached residential dwelling units are not subject to plan review by the local fire official as described in this section **or inspection by the local fire official as described in s. 633.216, unless expressly made subject to the plan review or inspection by local ordinance.**

This statute states specifically that it addresses permits, applications, issuance and inspection. These are in conjunction with initial construction. As stated in Santos v. State, 380 So.2d 1284 (Fla. 1980).

> **"The requirement that the subject of a law be briefly expressed in the title serves the purpose of providing notice to interested persons of the contents of an enactment**." State v. McDonald, 357 So.2d 405 (Fla. 1978); Knight & Wall Co. v. Bryant, 178 So.2d 5 (Fla. 1965). The purpose of the requirement that each law embrace only one subject and matter properly connected with it is to prevent subterfuge, surprise, "hodge-podge" and log rolling in legislation. State v. Lee, 356 So.2d 276 (Fla.1978); Lee v. Bigby Electric Co., 136 Fla. 305, 186 So. 505 (1939).

Santos at 1286 Emphasis added.

We will not allow partial sentences from statutes to be taken out of context for the purpose of avoiding responsibilities which are fully established under the Fire Safety Code and Fire Prevention Act. A partial citation of F.S. Sec. 553.79 (13) will not act to allow exemption from inspection for a group residential facility which was originally permitted as a single or two family detached dwelling.

Furthermore, we have seen a proliferation of claims which attempt to cite F. S Sec 419.001(2). We state that F.S. Sec. 419.001(2) statute refers to the location of community residential home where the title of the statute is "Site selection of community residential homes."

More to the point, F. S Sec 419.001(2) was intended to address Title VIII, 42 USC §3601, and F.S. Chapter 760 issues pertaining to the placement of a developmentally and intellectually disabled residential facility in the community without any type of "red lining" issues as evidenced by the title of the statute addressing "[S]ite selection."

We cannot responsibly equate the issue of the right to freedom of site selection with the right to be free from the Florida Building Code, the Florida Fire Prevention Act or freedom from fire safety.

In Eisenberg v. City of Miami Beach, 1 F. Supp 1327, 1349 (S.D. Florida 2014) the court cited Fla. Stat. § 633.202(6) wherein is stated:

> The Florida Fire Prevention Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements or land use requirements. Additionally, a local code enforcement agency may not administer or enforce the Florida Fire Prevention Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities. **This section shall not be construed to prohibit local government from imposing built-in fire protection systems or fire-related infrastructure requirements needed to properly protect the intended facility.**

See Eisenberg at 1349.

The Eisenberg court specifically noted the last sentence as illustrative of the fact that there is nothing in the matter of land-use regulations which would prevent the local authority from performing fire safety inspections.

Any attempt to shoehorn the siting status of a group living facility as set forth under FS Sec 419 into that of a single-family residence for operational functions necessarily fails.

It is axiomatic that if a residence was initially a single-family dwelling, it was "not subject to plan review or inspection by local ordinance." If the residence is subsequently repurposed as an assisted living facility, then under the Uniform Fire Code it must comply with new occupancy codes. This will require fire safety inspections as set forth under the state and local fire codes. Consequences and duties, are "determined not by what [something] is called, but by what it does" and is. See Miami Dade Co. v. Valdes, 9 So. 3d 17,22 (Fla. 3d DCA 2009).

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