

## STATE FIRE PREVENTION COMMISSION

### MINUTES

May 7, 2014

Members Present: Timothy F. Dayton, Chairman  
Charles D. Davis, Vice Chairman  
Mark F. Hubbard  
Martin J. LePore  
Stacy Welsh  
Richard L. Yinger

Member Absent: K.C. Harrington  
Eugene A. Jones  
Anthony J. Spencer

### FIRE MARSHAL REPORT

Fire Marshal Brian Geraci reported the Office of the State Fire Marshal (OSFM) is in the process of filling two Deputy State Fire Marshal (DSFM), one Fire Safety Inspector (FSI), and two Contract FSI positions. Two more DSFM positions are expected to be filled when vacancies become available at the end of May and July. Recruitment for the Chief Deputy State Fire Marshal position has closed and only one applicant was qualified for the position. The IT support position should be posted on the State web site today. Brian Collins began employment as a DSFM II on March 19<sup>th</sup> and has been assigned to the Upper Eastern Shore. DSFM Collins recently retired from the Prince George's County Fire and EMS Department where he served for many years on the Bomb Squad and Fire Investigations Unit. He will be a valuable asset to the OSFM team. Billie is the newest member of the OSFM accelerant detection canine team, assigned to DSFM Jeffrey Thomas on the Upper Eastern Shore. DSFM Edward Ernst, Western Region, recently was assigned an explosive canine from the Maryland Department of State Police. Hagerstown City also will be getting an explosive canine. DSFM Dan Giblin will be resigning this month to take a position with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Effective July 1<sup>st</sup>, a DSFM from the Lower Eastern Shore will transfer to the Upper Eastern Shore to be an FSI. Two additional Fire Protection Engineer positions have been requested.

The Metro Regional Office is being reorganized. One DSFM has been detailed to the Prince George's County Fire Department Fire Investigations Unit per their request. Both agencies believe this partnership will be beneficial. Two DSFM's will be re-assigned to the Northeast Region working out of the Westminster State Police Barrack. One DSFM (Michael Guderjohn) will assume duties as Executive Officer to assist in Headquarters with special projects. The Deputy Chief State Fire Marshal (John Wagner) will be the Headquarters' Administrative Officer but he plans to retire at the end of the year. The Fire Marshal would like the Executive Officer and Administrative Officer positions to be rotated so that field personnel can become familiar with headquarters operations, the budget process, the legislative process, etc. The FSI's will be re-assigned to the Northeast Region but will work out of the HQ Office. The Administrative Aide will assist the Executive Officer and the Fire Marshal. The Metro/NERO personnel will still handle inspections and issues with state-owned facilities.

Fire fatalities currently stand at 27 compared to 37 for this period last year. The National Fire Information Reporting System has ruled that the child fatality from the house explosion in Baltimore City was not determined to be a fire-related death. Additional information on fire deaths is available at the web site: [www.mdsp.org/firemarshal](http://www.mdsp.org/firemarshal).

During the first quarter of 2014, the OSFM conducted 295 fire and explosive investigations, closed 25 criminal cases by arrest resulting in 35 persons being charged with arson, explosive, and fire related offenses. A total of 3,687 inspections were conducted, 632 plans were received, and 492 plans were reviewed.

The legislative session has ended and it was a good learning experience. No legislative bills had any significant impact on the OSFM.

The Fire Marshal has requested the Maryland State Firemen's Association (MSFA) reach out to its membership and designate one point of contact in each county to streamline the MFIRS submission process. The OSFM's sole contact for MFIRS is Allison Nicodemus.

The OSFM is reaching out to the fire service for spring and fall community risk reduction initiatives. The OSFM is requesting all fire and rescue companies go into their communities to conduct home inspections along with smoke and carbon monoxide alarm checks. Preliminary dates are May 17-18<sup>th</sup> and October 18-19<sup>th</sup>. Commissioner Welch reported that recently her local fire department conducted surveys of the neighborhood and visited her home.

The OSFM is working with the Department of Aging to push fire safety education for seniors; i.e., Get Out-Stay Out, working smoke alarms, hoarding awareness. The Department of Health and Mental Hygiene (DHMH) has a mental health definition for hoarding and NFPA addresses it a little. He is communicating with Dr. Hepburn at DHMH who gets calls every week about hoarding situations. It would be nice to get hoarder locations in the CAD systems so first responders can be aware of hoarding conditions when responding to calls for service. Some jurisdictions already have programs in place. It is estimated there are 20,000 hoarders in Maryland.

A meeting was held March 20<sup>th</sup> with the jurisdictional fire marshal offices within the state, including the OSFM regional offices. Some of the topics discussed were community outreach, hoarding, reducing senior fire fatalities, juvenile fire setters, and jurisdictional issues. As a group, plans are to meet quarterly to discuss topics affecting communities and ways to prevent fires and explosions.

The Public Fire and Life Safety Seminar was held on March 22<sup>nd</sup> at Maryland Fire and Rescue Institute College Park. Approximately 100 persons attended and it provided timely and topical information.

Fire Marshal Geraci thanked Chairman Dayton, also the Chief of Potomac Fire Company 2 in Westernport, for inviting him to its annual banquet. The company has many members dedicated to the fire service and community and it was a great event.

The Maryland Youth Fire Intervention Coalition continues to make progress addressing juvenile fire setting issues in Maryland.

The Maryland Fire and Life Safety Information Exchange Program continues to update and post new information on their website: [www.mdilifesafety.org](http://www.mdilifesafety.org).

Members of the fire service are encouraged to visit [www.usfa.fema.gov/fireiseveryonesfight](http://www.usfa.fema.gov/fireiseveryonesfight) website to use the materials and logos for the U.S. Fire Administration's "Fire is Everyone's Fight" action plan.

Educational news releases and other information can be found at the OSFM's Facebook page <http://facebook.com/MarylandStateFireMarshal>.

## **CHAIRMAN REPORT**

Chairman Dayton reported he, Fire Marshal Geraci, former Fire Marshal William Barnard, and former Fire Marshal Rocco Gabriele will make a presentation regarding the 50<sup>th</sup> Anniversary at the MSFA Convention on Wednesday morning June 18<sup>th</sup>.

## OTHER BUSINESS

Commissioner Yinger questioned if there are any plans to ban or regulate electronic cigarettes which are reported to be the cause of several fires. The Fire Marshal is aware this is becoming an issue and intends to look into it further but it will be hard to ban them completely.

Chief Fire Protection Engineer (CFPE) Larry Iseminger reported he has been working on a 50th Anniversary book for the OSFM and Commission. He distributed a draft of the chapter on the Commission's history and requested members review it and provide any input or additional historical stories or photographs they would like included. To keep costs down, photos will not be printed but a CD containing photos will be provided with each book. A 50<sup>th</sup> Anniversary dinner banquet is scheduled for October 18<sup>th</sup> in the Baltimore area.

CFPE Iseminger reported Carroll County intends to begin conducting its own plan reviews and charging fees in an effort to improve their building permit process. OSFM personnel will continue conducting the inspections. Carroll County has conducted its own plan reviews in the past but never charged a fee so there were no issues with OSFM personnel conducting the inspections. In the past, when it was having manpower issues, the OSFM conducted both the plan reviews and inspections. So historically plan review and inspection services in Carroll County have gone back and forth through the years. To accommodate this request without placing any additional hardship costs on building permit applicants, it is proposed the county will charge and collect 50% of the plan review fees as outlined in COMAR 29.06.04.05 and the OSFM will charge and collect the other 50% to cover the cost of inspections. Fire Protection System plans and inspections will continue to be reviewed, charged, and inspected entirely by the OSFM. Since current law does not permit the OSFM to do this administratively, the OSFM requested the Commission's consideration of the following amendment to the regulations (proposed new language underlined) which would also allow the OSFM to modify the fees if in the future other counties request a similar arrangement.

### 29.06.04.01

C. *A municipal or county corporation establishing its own fee schedule shall be responsible for administering its own:*

- (a) Plan reviews or inspections;*
- (b) Fee Processing; and*
- (c) Payment collection.*

### 29.06.04.05

A. *Fee Schedule.*

*(1) The fee schedule in this section is to be used to calculate the fee to be paid for the review of plans for and inspection of all new and existing buildings, including a change in use or occupancy. Where a local jurisdiction elects to conduct plan reviews and adopts a fee schedule for these reviews but does not conduct the inspections, the State Fire Marshal shall be permitted to reduce the fee schedule rate under this regulation by 50 percent to cover the costs of inspections of the project conducted by the State Fire Marshal.*

Commissioner Hubbard recommended that a specific percentage not be included in case other counties in the future would like to charge a different percentage. CFPE Iseminger considered this a valid point. Motion by Commissioner Hubbard, second by Commissioner Lepore, and unanimously carried to accept the proposal with the deletion of "by 50 percent". Secretary Ritchie will begin processing the necessary paperwork to advertise the proposed amendments and schedule a public hearing as required.

Vice Chairman Davis thanked the Fire Marshal and his staff for the outstanding job they have been doing closing cases in Southern Maryland. Fire Marshal Geraci was very pleased that on a recent conviction the judge gave the maximum 20 year penalty and commented on the impact arson has on the community and the fire service.

Commissioner Hubbard attended the Annual Fallen Heroes Memorial Day at Dulaney Valley Memorial Gardens recently. Fire Marshal Geraci also attended and his support is greatly appreciated.

Commissioner Hubbard reported that volunteer firefighter Gene Kirchner with the Reisterstown Volunteer Fire Company has passed away from smoke inhalation received while fighting a fire. Condolences were expressed. Hoarding may have been a contributing factor. The official line-of-duty report should be forthcoming.

Commissioner Lepore thanked the OSFM personnel for their support and organizing activities and publications for the 50<sup>th</sup> Anniversary. It is great that the history of the OSFM and Commission is being preserved.

Motion by Commissioner Yinger, second by Commissioner LePore and unanimously carried to approve the minutes of the February 20, 2014, meeting.

#### **MEETING SCHEDULED**

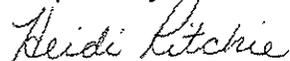
The next meeting has been scheduled for Tuesday June 17, 2014, at 11:00 a.m. at the Roland E. Powell Convention Center, 4001 Coastal Highway (room to be announced), Ocean City, Maryland.

#### **APPEALS**

Appeal 14-01 Nichols Senior Care, Edgewood, Harford County. The Petitioner appealed an order of the State Fire Marshal which classified several residents as having a change in evacuation capability to "impractical" thereby requiring the installation of an approved automatic fire sprinkler system.

After hearing the testimony, Chairman Dayton concluded the public meeting and the Commission convened in closed session to deliberate its findings. The Commission unanimously concluded that the evacuation capability of the residents has changed from slow to impractical as determined by the Department of Health and Mental Hygiene and the Office of the State Fire Marshal and that the lack of an approved supervised automatic fire sprinkler system poses a hazard so inimicable to the safety of the residents as to require correction. Therefore, the Commission affirms the December 11, 2013, decision of the State Fire Marshal and denies the appeal.

Respectfully submitted,



Heidi Ritchie, Secretary

Attachment: Appeal 14-01 Final Memorandum Opinion and Order

BEFORE THE FIRE PREVENTION COMMISSION

NICHOLS SENIOR CARE	*	
Petitioner	*	
v.	*	Case No. 14-01
STATE FIRE MARSHAL	*	
Respondent	*	

**MEMORANDUM OPINION AND ORDER**

**I. Introduction**

Currently pending before this Commission is the appeal of Nichols Senior Care (“Nichols”), a residential board and care facility, located at 1111 Hanson Road in Edgewood, Maryland. Nichols is taking issue with the State Fire Marshal’s enforcement of a provision of the State Fire Prevention Code. By letter dated November 20, 2013, Deputy Chief State Fire Marshal Matthew D. Stevens informed Nichols that because its residents were incapable of self-preservation, the facility was classified as “impractical evacuation capability,” and that in accordance with NFPA 101, Life Safety Code, § 33.1.8 (Changes in Group Evacuation Capability), Nichols requires an automatic sprinkler system that complies with NFPA 101 § 32.3.3.5.

Nichols appealed this determination to Joseph C. Flanagan, Chief Deputy State Fire Marshal. On December 11, 2013, Chief Deputy Flanagan denied the

appeal. In his letter denying the appeal, Chief Deputy Flanagan made the following findings:

1. Nichols Senior Care has operated with an evacuation capacity of slow.
2. In October of 2013, DHMH [the Department of Health and Mental Hygiene] evaluated the facility and identified several residents who were not able to self-evacuate or evacuate without significant assistance from Nichols Senior Care staff.
3. Sufficient staff is not in place during the overnight shift to evacuate all residents in a timely manner.
4. The facility has changed the evacuation capability to a greater risk.

Chief Deputy Flanagan concluded that Nichols was required either to reduce the risk of evacuation to a slow evacuation capability, or to comply with NFPA 101 Chapter 33.1.8, including the installation of an approved, supervised automatic sprinkler system.

On December 31, 2013, Nichols filed a timely petition with this Commission, arguing that its facility should be classified as having a slow evacuation capability, not an impractical evacuation capability.

For the reasons set forth below, this Commission will deny the appeal filed by Nichols and will affirm the December 11, 2013 decision of the Fire Marshal.

## **II. Issue**

Should Nichols be classified as having an impractical evacuation capability, and should it therefore be required to comply with § 33.1.8 of NFPA 101 Life Safety Code (2012 edition), as adopted by this Commission by way of Code of Maryland Regulation (COMAR) 29.06.01.07?

### **III. Findings of Fact**

1. Nichols is an assisted living facility for the elderly, and it is classified as a residential board and care facility. It is permitted to house sixteen residents.

2. Barbara Shannon, a registered nurse employed by DHMH for twelve years, conducts inspections of assisted living facilities, evaluates residents' records, and reviews the physical aspects of the facilities.

3. Ms. Shannon conducted an inspection of Nichols from September 17, 2013 to September 18, 2013, when it had sixteen residents. Ms. Shannon reviewed the residents' records maintained by Nichols's staff, and she interviewed each resident. Thirteen residents had dementia; seven residents were ambulatory; and six residents required a walker or a wheelchair. One of the residents was bed-bound, and she required the use of Hoyer lift for transfer out of bed to a wheelchair.<sup>1</sup> Another resident could walk only if she had her leg brace on, and she required the assistance of staff members to put on the brace; in the alternative, she required the assistance of a staff member to be lifted out of bed and either placed in a wheelchair or carried. Ms. Shannon therefore determined that several residents of the facility were incapable of self-preservation in the event of an emergency requiring evacuation of the facility.

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<sup>1</sup> This resident died in March 2014.

4. Currently, Nichols has fifteen residents, six of whom use walkers and four of whom use wheelchairs. The resident who needs the leg brace is still a resident.

5. Nichols does not have an approved, supervised automatic sprinkler system.

6. Nichols does not have sufficient secondary exits from several of the bedrooms. For example, one bedroom does not have a window, and in another bedroom, the window is higher than 44 inches above the floor and leads to an area under a porch.

7. Nichols does not have an NFPA 72 compliant fire alarm system.

8. During the day shift, Nichols has three staff members and one cook; during the evening shift, Nichols has two staff members; and during the overnight shift, Nichols has only one staff member. Sue Nichols, the Assisted Living Manager lives in the upper level of the facility with her husband; sometimes, one of them serves as the overnight staff member. Family members of Mr. and Mrs. Nichols live in very close proximity to Nichols, but they do not live in the facility itself.

9. In the past, the Fire Marshal considered that the residents of Nichols had a slow evacuation capability.

10. Both DHMH and the Fire Marshal now consider that the current residents of Nichols have an impractical evacuation capability.

11. Given the physical and mental limitations of the current residents, the residents would not be able to reliably move to a point of safety in a timely manner in the event of a fire or other life-threatening emergency.

12. The impractical evacuation capability of the current residents, and the lack of an approved, supervised automatic sprinkler system, pose a hazard so inimicable to the public safety as to require correction.

#### **IV. Conclusions of Law**

1. This Commission has incorporated by reference NFPA 101 Life Safety Code (2012 ed.) into the State Fire Prevention Code, except for certain amendments not relevant to this case. COMAR 29.06.01.07.

2. The Commission has adopted without amendment § 3.3.76 of the NFPA 101, Life Safety Code. That section provides as follows.

**3.3.76 Evacuation Capability.** The ability of occupants, residents, and staff as a group either to evacuate a building or relocate from the point of occupancy to a point of safety.

**3.3.76.1 *Impractical Evacuation Capability.*** The inability of a group to reliably move to a point of safety in a timely manner.

**3.3.76.2 *Prompt Evacuation Capability.*** The ability of a group to move reliably to a point of safety in a timely manner that is equivalent to the capacity of a household in the general population.

**3.3.76.3 *Slow Evacuation Capability.*** The ability of a group to move reliably to a point of safety in a timely manner, but not as rapidly as members of a household in the general population.

3. The Commission has adopted without amendment § 33.1.8 of NFPA 101, Life Safety Code. That section states in pertinent part as follows:

**33.1.8 Changes in Group Evacuation Capability.** A change in evacuation capability to a slower level shall be permitted where the facility conforms to one of the following requirements:

- (1) The requirements of Chapter 32 applicable to new board and care facilities.
- (2) The requirements of Chapter 33 applicable to existing board and care facilities for the new evacuation capability, provided that the building is protected throughout by an approved, supervised automatic sprinkler system complying with 32.3.3.5.

4. Because the evacuation capability of the residents of Nichols has changed from slow to impractical, Nichols must install an approved, supervised automatic sprinkler system.

5. To the extent that Nichols is arguing that the Fire Marshal is estopped from enforcing the provisions of the Fire Prevention Code because in the past, it permitted Nichols to house residents with an impractical evacuation capability, this Commission rejects that argument because estoppel does not lie against a government agency performing a governmental function. *Salisbury Beauty Schools, et al. v. State Bd. of Cosmetologists*, 268 Md. 32, 300 A.2d 367 (1973).

## **V. Conclusion**

Therefore, based on the above findings and our review of the above-quoted provision of the NFPA Life Safety Code adopted by this Commission, the Commission affirms the December 11, 2013 decision of the State Fire Marshal.

**ORDER**

For the foregoing reasons, on this 3rd day of June, 2014, the appeal filed by Nichols is DENIED, and the December 11, 2013 decision of the State Fire Marshal is AFFIRMED.

*Timothy F. Dayton/m*

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Timothy F. Dayton  
Chairman, Fire Prevention Commission