

**STATE FIRE PREVENTION COMMISSION
MINUTES
December 17, 2015**

Members Present: Charles D. Davis, Chairman
Mark F. Hubbard, Vice Chairman
Mark A. Bilger
Martin J. LePore
Stacy Welch
Richard L. Yinger

Members Absent: K.C. Harrington
Joseph L. Scheffey
Anthony J. Spencer

Chairman Davis called the meeting to order at the Maryland State Police Barracks in Hagerstown, Washington County.

FIRE MARSHAL REPORT

Fire Marshal Brian Geraci reported on several personnel issues. The Office of the State Fire Marshal (OSFM) currently has two sworn and six civilian vacancies, with several in the process of being filled. On November 7, 2015, two new Deputy State Fire Marshals (DSFMs) began their law enforcement academy training in Southern Maryland. DSFM Brandon Shepperd graduated from academy training on December 1st with honors and as class president. Fire Safety Inspector (FSI) Joseph Faunce began employment on November 12th. DSFM Shepperd and FSI Faunce are assigned to the Southern Region. DSFM Oliver Alkire and K-9 Kachina (Northeast Region) will graduate the ATF Accelerant Detection Canine Program December 18th. K-9 Kachina received an injury during training and is currently in rehab. She is expected to make a full recovery. The OSFM now has three accelerant K-9s (Southern, Eastern, and Northeast). The Southern K-9 is scheduled for retirement but he will be replaced. A fourth Deputy has expressed interest in also being an accelerant K-9 handler. The OSFM has two explosive K-9s (Western and Bomb Squad). Chief Fire Protection Engineer (CFPE) A. Larry Iseminger, Jr. and Deputy Chief State Fire Marshal (DCSFM) Allen R. Gosnell will retire from the agency December 31, 2015. We thank them for their decades of service and wish them well. Fire Protection Engineer Ken Bush will be the acting CFPE; DCSFM Caryn McMahon will be the Administrative Services Chief in HQ; DSFM Matthew Stevens will command the Upper Eastern Shore Region; and Senior DSFM Derek Chapman will be the acting Commander for the Northeast Region. Permanent decisions on assignments will be made in a few months. At this time, A/CFPE Bush will continue to do plan reviews for Eastern Shore projects. It is anticipated four vacant Maryland State Police (MSP) positions will be reclassified and transferred to the OSFM as three FSIs and one FPE. The Fire Marshal distributed an updated OSFM organizational chart.

Fire fatalities as of this date total 59 for the year, the same as last year. During the first six months, there were 26 fires resulting in 35 deaths in 10 counties and Baltimore City. Eighty percent of these fires were in one- and two-family dwellings. Electrical was the number one cause. Twenty-eight persons died in nineteen residential fires in the first six months. In fifteen of these fires the smoke alarm was reported to be functioning at the time of the fire. Seven children and twenty-one victims age 55 and older died in the first six months. Baltimore City has reported seventeen fire fatalities this year, with Anne Arundel County second highest at twelve.

MSP has included all of the OSFM requests in the Fiscal Year 2017 budget proposal. This includes \$300,000 for new vehicles over the next three fiscal years, three new FPEs, and eight new FSIs—all of which are over the target requests. The annual salary review for FSIs was also approved for

submission. The vehicle funding was approved by the Department of Budget and Management. The additional positions have not yet been approved.

The OSFM is partnering with the Maryland State Firemen's Association (MSFA) and the Maryland Fire Chiefs Association (MFCA) to conduct side-by-side burns for residential sprinkler demonstrations on the Eastern Shore. To date, numerous successful demonstrations have been conducted on the Eastern Shore. An additional burn is scheduled for Salisbury and one in Hagerstown. There will also be a demonstration in Annapolis at the Fire-Rescue Memorial on the night of the legislative reception.

A House bill has been pre-filed by Delegate Adams (Eastern Shore) to allow home buyers a choice of whether to install residential sprinklers. Unfortunately, buyers usually prefer to opt out. A Senate bill has not been filed yet. There is also a push to make residential sprinkler requirements a local decision instead of a statewide mandate. The National Fire Sprinkler Association has hired a lobbyist.

The Maryland Stadium Authority has been tasked to build and renovate 23 to 28 schools in Baltimore City over the next four years. The OSFM will be involved with the plan reviews and inspections. The Stadium Authority is purchasing electronic plan review computers and software to facilitate in this endeavor.

The National Fallen Firefighters has sponsored the "Leading and Leaving Life Safety Lessons Learned" summit in Annapolis this month. Fire safety professionals from around the country attended. Maryland was featured for its smoke alarm and residential sprinkler efforts.

The Regulatory Reform Commission Report has been published and it appears the OSFM fared well other than the mention of residential sprinklers requirements from the Eastern Shore. The Fire Marshal hopes to use this report to improve OSFM technology and customer service. He hopes to eventually separate the investigation and inspection duties into separate entities within the agency.

The Fire Marshal has offered OSFM assistance to Baltimore City should it be needed during the upcoming trials of several police officers.

As a reminder, useful information and news releases can be found at the following websites: www.md-lifesafety.org and <http://facebook.com/MarylandStateFireMarshal>.

CHIEF ENGINEER REPORT

The 2015 editions of NFPA 1 and NFPA 101 along with amended state fire code regulations go into effect January 1, 2016.

The recently held code update seminars were all full. Many thanks to the National Fire Protection Association for providing the instructor and code books and to the Maryland Fire and Rescue Institute (MFRI) for use of its classroom.

CFPE Iseminger stated it has been a pleasure working in the OSFM and with the Commission during his thirty-eight years of state service. He is looking forward to his retirement and thanked everyone for their support and well wishes.

CHAIRMAN REPORT

Chairman Davis inquired as to the status of finding a replacement secretary for the Commission. Secretary Ritchie intends to resign her duties effective February 1, 2016. Chairman Davis stated that

taking the minutes at meetings may not be a problem, but the secretary handles many other duties such as responding to emails, phone calls, correspondence, scheduling appeals, and preparing and submitting required reports, etc. The Fire Marshal stated he has been unable to find a replacement and suggested that it be handled by OSFM HQ staff. Assistant Attorney General Baron advised there needs to be a specific person assigned as Secretary whose duties are separate from OSFM HQ. The Fire Marshal advised that hiring a new contractual employee as suggested by Vice Chairman Hubbard is also not feasible. Commissioner Bilger suggested that Superintendent Pallozzi be approached regarding a replacement. Chairman Davis thanked Mrs. Ritchie for her sixteen years as serving as Secretary to the Commission.

Chairman Davis reported the Commission has sent a letter in support of retaining residential sprinkler requirements to the MSFA legislative committee chairman.

The Chairman thanked the OSFM Southern Region staff who have been very busy in Saint Mary's and Charles County.

OTHER BUSINESS

The Commission members thanked CFPE Iseminger and Secretary Ritchie for their service and wished everyone happy holidays.

Commissioner Bilger reported in January he will begin employment with MFRI as the Upper Eastern Shore Regional Training Coordinator.

Commissioner Yinger commented that DSFM Bouch's interview on Channel 45 was very good. The fire victim who survived because of sprinklers and is now an advocate made the interview very sincere. The public needs to be informed of the true cost of sprinklers instead of the inflated costs opponents use. The Fire Marshal reported a recent survey of sprinkler contractors indicates it currently costs about \$1.44 per square foot to install a sprinkler system in homes on public water.

Vice Chairman Hubbard was pleased to see the Maryland Association of Counties supporting the MSFA and OSFM.

Vice Chairman Hubbard reported with the upcoming Baltimore City police officer trials, unrest in the city and metropolitan areas is anticipated. The Maryland Emergency Management Agency is working to have a good plan in place.

Motion by Commissioner Yinger, second by Commissioner LePore, and unanimously carried to approve the minutes of the October 15, 2015, meeting.

MEETING SCHEDULED

The next meeting has been scheduled for

Thursday February 18, 2016 – 9:30 a.m.
Taylor Avenue Fire Station
620 Taylor Avenue, Upper Level Classroom
Annapolis, Anne Arundel County

APPEAL HEARING

Appeal #15-02 Tim Theodoropoulos, Baltimore County. The Petitioner seeks to overturn the Fire Marshal's removal of a letter of reprimand from the file of licensed sprinkler contractor Heubeck Sprinkler Inspection Company.

After hearing the testimony, Chairman Davis concluded the public meeting and hearing and the Commission convened in closed session to deliberate its findings. After discussing the evidence presented at the hearing, the Commission unanimously concluded that it is within the discretion of the Fire Marshal to reprimand a licensed sprinkler contractor. However, sufficient evidence was not presented for the Commission to determine whether the Fire Marshal abused his discretion in removing the letter of reprimand from Heubeck's file. For reasons noted in the attached Memorandum Opinion and Order, the Commission remands the case to the Fire Marshal to conduct a thorough reinvestigation and to report back to the Commission within sixty days.

Respectfully submitted,



Heidi Ritchie, Secretary

Attachment: Memorandum Opinion and Order Case #15-02

BEFORE THE FIRE PREVENTION COMMISSION

TIM THEODOROPOULOS,

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Petitioner,

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v.

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Case No. 15-02

STATE FIRE MARSHAL,

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Respondent.

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MEMORANDUM OPINION AND ORDER

Currently pending before this Commission is an appeal filed by Tim Theodoropoulos, in which Mr. Theodoropoulos seeks to overturn the Fire Marshal's removal of a letter of reprimand from the file of licensed sprinkler contractor Heubeck Sprinkler Inspection Company ("Heubeck").

I. Facts

Mr. Theodoropoulos, a private citizen, entered into a contract with Heubeck, a licensed sprinkler contractor. Mr. Theodoropoulos was extremely dissatisfied with the quality of the work done (or not done) by Heubeck in his new home, and he filed a complaint with the Fire Marshal. The Fire Marshal referred the matter to Deputy State Fire Marshal Brian Quick, an employee of the Office of the State Fire Marshal, for an investigation. During the investigation, Heubeck refused to cooperate with the investigator and its owner would not speak with the investigator.

Based primarily on the information provided by Mr. Theodoropoulos, the Fire Marshal decided to reprimand Heubeck, and he placed a letter of reprimand in Heubeck's file. Upon receiving a copy of the letter of reprimand, Heubeck provided unspecified new information to the Fire Marshal. This new information caused the Fire Marshal to reconsider his decision to reprimand Heubeck, and the Fire Marshal decided to remove the letter of reprimand from Heubeck's file. The Fire Marshal did not provide Mr. Theodoropoulos the unspecified new information or notify him of the removal of the letter of reprimand from Heubeck's file.

II. Issue

Upon receiving new information previously unknown to him, did the Fire Marshal have the discretion to remove the letter of reprimand from Heubeck's file?

III. Analysis

A threshold issue in this case is whether a person to whom an order or decision of the Fire Marshal has not been directed can be "aggrieved" within the meaning of § 6-501 of the Public Safety Article of the Annotated Code of Maryland. Pursuant to PS § 6-501, "[a]n appeal to the Commission may be taken by: (1) a person who is aggrieved by an order or decision of the State Fire Marshal made in the administrative enforcement of this article; or (2) an officer, unit, or agency of the State or a political subdivision of the State that is affected by an

order or decision of the State Fire Marshal made in the administration or enforcement of this article.” Because the Fire Marshal did not raise this argument at the hearing held by this Commission on December 17, 2015, this Commission will assume without deciding that under the circumstances of this case, a private citizen has standing to appeal the Fire Marshal’s decision to remove a letter of reprimand from the file of a licensed sprinkler contractor.

IV. Discussion

This Commission agrees with the Fire Marshal that the decision of whether to reprimand a licensed sprinkler contractor is within the discretion of the Fire Marshal. That discretion is not unfettered, however. The evidence presented by Mr. Theodoropoulos during the hearing held on December 17, 2015, reflects that Heubeck’s work was substandard. The Fire Marshal did not present any evidence contradicting the evidence presented by Mr. Theodoropoulos, nor did he fully explain why the letter of reprimand was removed from Heubeck’s file.

As a consequence, this Commission is unable to determine whether the Fire Marshal abused his discretion in removing the letter of reprimand from Heubeck’s file. This Commission will therefore direct the Fire Marshal to conduct a thorough reinvestigation and to reconsider the removal of the letter of reprimand from Heubeck's file. If, after reinvestigating the matter, the Fire Marshal decides to reprimand Heubeck, Heubeck may appeal the Fire Marshal’s decision to this Commission.

V. Conclusion

For the above reasons, this Commission will remand this case to the Fire Marshal to conduct a thorough reinvestigation and to report back to this Commission within sixty days.

ORDER

For the foregoing reasons, it is hereby ORDERED, on this 13th day of January, 2016, that the appeal filed by Tim Theodoropoulos is REMANDED to the Fire Marshal to conduct a thorough reinvestigation and to report back to this Commission within sixty days.

C. Daniel Davis, Jr. /m

C. Daniel Davis, Jr.
Chairman, Fire Prevention Commission