

STATE FIRE PREVENTION COMMISSION
MINUTES
February 19, 2015

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

Members Absent: Anthony J. Spencer

Chairman Davis called the meeting to order at the Taylor Avenue Fire Station in Annapolis, Anne Arundel County.

FIRE MARSHAL REPORT

Fire Marshal Brian Geraci reported that the Office of the State Fire Marshal (OSFM) currently has eleven vacancies: four sworn, five civilians, and two contractual. Additionally, one Deputy is off on military leave and one inspector is on extended sick leave and will be retiring at the end of the month. Approval has been obtained and the agency is in the early stages of filling two civilian, two contractual, and four sworn positions. One civilian inspector will be assigned to the Southern Region, one civilian IT position will be assigned to Headquarters, and the two contractual inspectors will be assigned to the Southern and Northeast Regions. The assignment of the four sworn positions has not yet been determined. With the retirement of Deputy Chief Jack Wagner in December, Senior Deputy State Fire Marshal Caryn McMahon has been promoted to Deputy Chief and will assume the regional command of the Upper Eastern Shore. Deputy Chief Allen Gosnell has assumed the duties of the Administrative Services Chief in the Headquarters Office.

The Department of State Police must cut 50 positions and 2% across the board from its budget. At this point, it is unknown specifically how this will affect the OSFM. Positions are basically all they have to give up and he does not intend to give up any sworn positions. The civilian fee program position is still open. The Fire Marshal has requested two civilian positions be changed to sworn positions but he has not yet received a response. The State is offering incentives for certain employees to separate from state service in an effort to reduce the workforce. He is not yet aware of any OSFM employees wishing to do so.

Vehicle and high mileage continue to be an issue. Chairman Davis offered the Commission's support to assist the Fire Marshal in his efforts to get new vehicles. The Fire Marshal will provide the Commission with current vehicle mileage status.

Fire fatalities to date total 14 compared to 9 for the same period last year. Seven of these fatalities have been children under the age of 18. In 2014, 64 lives were lost in 55 fires; 10 of these deaths were non-preventable, such as vehicle accidents or suicides. Counties that had no fatalities included Caroline, Charles, Dorchester, Frederick, Garrett, Harford, Talbot and Worcester. Additional information can be found at www.mdsp.org/firemarshal. The Fire Marshal would like to focus on reducing senior citizen fatalities.

In 2014, OSFM personnel conducted 1,061 investigations—770 fires, 229 explosives, and 62 other—a 4% increase from 2013. 206 of the fires were criminal in nature—an 18% reduction from 2013. 66 of these cases were closed by arrest—a 32% closure rate and well above the 17-19% national average. Of the 229 explosive investigations, 41 were criminal with 14 closed by arrest for a 34% closure rate. Of the 62 other investigations, 41 were criminal with 35 closed by arrest for an 85% closure rate. A total of 150 persons were arrested for all three categories of investigations, 77 of which were juveniles.

The Canine Unit received 1,639 training hours, responded to 131 incidents, spending 644 hours on the scenes. The Bomb Squad Unit responded to 238 incidents, 8 of which were for the Underwater Hazardous Devices Team. The squad received 1,466 hours of UHDT training. The Fire Investigation Unit housed in the Northeast Region responded to a total of 22 incidents.

OSFM personnel conducted 16,131 inspections and engineers conducted 1,849 plan reviews. Agency personnel spent 845 hours on community outreach and received a total of 5,778 hours training.

The OSFM collected \$1,135,175 in fees for plan reviews, inspections, licenses, and permits.

Several bills are being monitored: HB236 Assault on Fire and Rescue Personnel; HB270 Property of Another; SB262 Energy Codes (Sprinklers); SB137 Solicitation to Commit Crime/Statute of Limitations; SB107 Carbon Monoxide Alarms for Hotels; HB 620 Drones—the bomb squad has two drones which are used on investigations and the operators are certified per FAA requirements; HB825 Carbon Monoxide and portable generator will put enforcement in the fire code to which the Fire Marshal has no objection. There are some issues with the language. There appears to be growing opposition to the residential sprinkler requirements that go into effect this year. Eastern Shore representatives want to exempt homes not served by public water. They may be getting misinformation on the true costs. Sprinklers cost about 1% of the cost of the house. The Fire Marshal will draft a letter of opposition. He has data on how sprinklers save lives. He would like the Commission to also oppose it. Motion by Commissioner Dayton, second by Commissioner Harrington and unanimously carried to sign a letter opposing changes to lessen sprinkler requirements. Chairman Davis reported an attempt by the St. Mary's County Commissioners to exempt sprinkler requirements was defeated. Commissioner Yinger reported Dorchester County is sending a letter to its delegation to leave sprinkler requirements in place. Commissioner Welsh supports any legislation to require sprinklers.

Washington County has proposed a bill to switch to a six-year building code adoption cycle. Commissioner Dayton questioned how this would affect insurance rates if a county adopts a sub-standard code cycle. The Fire Marshal reported the Insurance Services Office (ISO) recently issued revised ratings. Chief Fire Protection Engineer Iseminger stated the ISO grading system evaluates code enforcement and if the most recent code has not been adopted it could be a factor in downgrading ratings.

CHIEF ENGINEER REPORT

The Code Update Committee held its first meeting to review the 2015 editions of NFPA 1 and 101. Although the first meeting had to be rescheduled due to snow, it appears the committee will still be on schedule to present a proposal to the Commission in April or June and to adopt the new codes January 1, 2016.

So far in 2015, the OSFM has revoked seven sprinkler contractor licenses. Some went out of business, some were out of state companies that only applied for a Maryland license for specific jobs, and a couple designated qualified individuals lost their NICET certification—a licensing requirement.

Chief Iseminger applauded the Fire Marshal's efforts to oppose any attempts to remove residential sprinkler requirements. If the requirements remain intact after the legislative session ends, he will deserve credit.

CHAIRMAN REPORT

Chairman Davis reported Calvert County firefighters encountered hoarding conditions at a house fire. Two firefighters became disoriented, issued a Mayday call, and were saved. Emergency responders need to be aware of the dangers of hoarding.

A County Commissioner recently participated in a Hollywood Fire Department burn training at a residential dwelling. It's good for local elected officials to be interested and involved in fire department activities and issues.

Condolences were expressed for past Chairman Richard Brooks whose father recently passed away. The viewing is scheduled for Friday and the funeral for Saturday.

OTHER BUSINESS

Vice Chairman Hubbard introduced Lt. Trisha Wolford with the Anne Arundel County Fire Department. Unfortunately, Anne Arundel County has had nine fire fatalities so far this year and efforts are being made to increase public awareness on fire prevention.

Commissioner Lepore reported the Maryland Fire and Rescue Institute will be placing sensors in its burn building to conduct a week-long test on fire behavior. He will share the results with the Commission.

Motion by Commissioner Yinger, second by Commissioner Dayton, and unanimously carried to approve the minutes of the December 18, 2014, meeting.

APPEAL HEARING

Appeal #15-01 Wisp Resort, McHenry, Garrett County. The Petitioner appealed an order of the State Fire Marshal which classified a membrane structure (tent) as a permanent structure thereby requiring the installation of approved automatic fire sprinkler and fire alarm systems.

After hearing the testimony, Chairman Davis concluded the public meeting and the Commission convened in closed session to deliberate its findings. The Commission unanimously concluded that because the tent is in place for more than 180 consecutive days, it is a permanent structure and must comply with the applicable provisions of the State Fire Prevention Code. Therefore, the Commission affirms the January 16, 2015, decision of the State Fire Marshal and denies the appeal.

MEETING SCHEDULED

The next meeting has been scheduled for
Thursday, April 16, 2015 – 9:30 a.m.
Laurel Municipal Building, Council Chambers
8103 Sandy Spring Road
Laurel, Prince George's County

Respectfully submitted,



Heidi Ritchie, Secretary

Attachment: Memorandum Opinion and Order

BEFORE THE FIRE PREVENTION COMMISSION

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| WISP RESORT | * | |
| Petitioner | * | |
| v. | * | Case No. 15-01 |
| STATE FIRE MARSHAL | * | |
| Respondent | * | |

MEMORANDUM OPINION AND ORDER

I. Introduction

Currently pending before this Commission is the appeal of Wisp Resort (“Wisp”), regarding a membrane structure (“tent”), located at 296 Marsh Hill Road in McHenry, Maryland. Wisp is taking issue with the State Fire Marshal’s enforcement of a provision of the State Fire Prevention Code. By letter dated January 16, 2015, Deputy Chief State Fire Marshal Jason M. Mowbray informed Wisp that because the tent has been in place more than 180 days in a consecutive 12 month period, the tent was classified as a “permanent structure,” and that in accordance with NFPA 101, Life Safety Code, § 3.3.271.8 (Permanent Structure), Wisp must comply with the requirements in a letter dated May 21, 2014, from Chief Fire Protection Engineer A. Larry Iseminger, Jr., including the installation of an automatic sprinkler system as required by NFPA 101 § 12.3.5.2 and the International Building Code, § 903.2.1.2 and the installation of a fire alarm system as required by NFPA 101 § 12.3.4.1.1.

On February 2, 2015, Wisp filed a timely petition with this Commission, arguing that the tent should be classified as a temporary structure since it would not be occupied for more than 180 consecutive days and erecting and dismantling the tent each season would be a hardship.

For the reasons set forth below, this Commission will deny the appeal filed by Wisp and will affirm the January 16, 2015, decision of the Fire Marshal.

II. Issue

Should the tent be classified as a permanent structure, and should it therefore be required to comply with §§ 12.3.5.2 and 12.3.4.1.1 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 and § 903.2.1.2 of the International Building Code (2012 edition), as adopted by this Commission by way of the Code of Maryland Regulation (COMAR) 29.06.01.08.PP?

III. Findings of Fact

1. On May 13, 2014, Jerry Geisler, General Manager for the Wisp Resort, sent a letter to Fire Protection Engineer Dan Hoang to initiate a plan review for the erection and placement of the tent. Mr. Geisler indicated the tent would be used seasonally for up to six months and that he did not wish to take the tent down during the non-use months. (Fire Marshal Exhibit 2)

2. On May 21, 2014, Chief Fire Protection Engineer A. Larry Iseminger, Jr. sent a plan review letter to Mr. Geisler. Chief Iseminger testified the letter has a typographical error in Comment 1A. The word “no” should be

deleted and the comment should read “PERMANENT STRUCTURE – A building or structure that is intended to remain in place for a period of more than 180 days in any consecutive 12 month period. (NFPA 101, 3.3.271.8)”. Fire Marshal Exhibit 3.

3. Mr. Geisler testified he received the plan review letter but did not provide the Office of the State Fire Marshal with a point-by-point response as requested.

4. Comment #17 in the plan review letter requested that “no building permit be issued for this project until fire code issues for the project are resolved”. Jim Torrington, the Director of the Garrett County Permits and Inspections Services Department (“Garrett County”), testified he received the plan review letter and issued the permit despite the Fire Marshal’s request.

5. The tent is classified as a new assembly A-2 occupancy measuring 80 foot by 80 foot (6,400 square feet) having a calculated occupant load of more than 400 persons based on an occupant load factor of 15 square feet per person.

6. The tent is used to host wedding receptions and banquets and is equipped with tables and chairs. In 2014, the Wisp hosted 13 wedding receptions and 3 banquets in the tent. The first wedding reception took place on June 13, 2014. Twice this number of reservations have been booked for the 2015 season.

7. The tent was used during the 2014 season without having obtained a use and occupancy permit from Garrett County. Garrett County received all agency required approvals for use and occupancy with the exception of the State

Fire Marshal. The State Fire Marshal did not conduct a use and occupancy inspection because it did not receive a request to do so.

8. Senior Deputy State Fire Marshal Jamie D. Rodeheaver became aware of the tent as a result of the plan review letter. In June 2014, while at the resort to inspect other projects, he observed the erected tent.

9. The International Building Code as adopted by Garrett County also defines a temporary structure as one that is in place no longer than 180 consecutive days. Garrett County issued the building permit classifying it as a temporary structure since it would not be occupied for more than 180 consecutive days.

10. Wisp and the State Fire Marshal are unsure if the structure can support the weight of an automatic sprinkler system. No documentation from the tent manufacturer was provided regarding structural support capabilities. During the winter months four temporary posts are installed to provide the 55 pound snow load support requirements of Garrett County. The parties have not discussed alternative measures that could meet the requirements of the applicable code provisions.

11. The tent has an aluminum frame structure covered with a membrane fabric that has an affixed flame retardant label. The interior draped fabric does not have an affixed flame retardant label. The floor covering is indoor/outdoor carpet.

12. The tent is equipped with electrical service and heat pumps that are used primarily for air conditioning purposes. The tent is not equipped with a kitchen or plumbing services.

13. Other smaller membrane structures at the resort were permitted to be occupied by the State Fire Marshal because code compliant equivalencies were achieved or occupant loads were limited. (Fire Marshal Exhibit 5)

14. Deputy Rodeheaver visited the site on January 21, 2015, to obtain photographs at which time he observed the tent being used to store golf carts. The heating units were in operation. Mr. Geisler testified, the golf carts are gasoline powered and tables and chairs were also stored in the tent. Fire Marshal Exhibit 1.

15. There is only one 20 foot wide fire department access road to the tent which does not provide vehicular access to all sides. Deputy Rodeheaver testified this road was not being maintained at the time of his January 21, 2015, visit.

IV. Conclusions of Law

1. Because the tent is in place for more than 180 consecutive days, it is a permanent structure.

2. Wisp must therefore comply with the applicable provisions of the State Fire Prevention Code, as quoted below.

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

4. This Commission has incorporated by reference NFPA 1 Fire Code (2012 edition) into the State Fire Prevention Code with amendments relevant to this case. COMAR 29.06.01.08.

5. This Commission has incorporated by reference § 903 of the International Building Code (2012 edition) into the State Fire Prevention Code without amendments. COMAR 29.06.01.08.PP.

6. The Commission has adopted without amendment § 3.3.271.8 of the NFPA 101, Life Safety Code. That section provides as follows.

3.3.271.8 Permanent Structure. A building or structure that is intended to remain in place for a period of more than 180 days in any consecutive 12-month period.

7. The Commission has adopted without amendment § 12.3.5.2 of NFPA 101, Life Safety Code. That section states in pertinent part as follows:

12.3.5.2 Any building containing one or more assembly occupancies where the aggregate occupant load of the assembly occupancies exceeds 300 shall be protected by an approved, supervised automatic sprinkler system in accordance with Section 9.7 as follows:

(1) Throughout the story containing the assembly occupancy...

8. The Commission has adopted § 13.3.2.1 of NFPA 1, Fire Code with amendment to add § 13.3.2.1.1. That section states in pertinent part as follows:

13.3.2.1.1 All new buildings shall be equipped with an automatic sprinkler system or other automatic fire suppression system where required by Section 903 of the International Building Code as incorporated by reference by the Maryland Building Performance Standards.

9. The Commission has adopted without amendment § 903.2.1.2 of the International Building Code. That section states in pertinent part as follows:

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet;
2. The fire area has an occupant load of 100 or more; or...

10. The Commission has adopted without amendment § 12.3.4.1.1 of the NFPA 101, Life Safety Code. That section provides as follows.

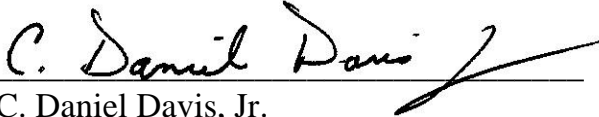
12.3.4.1.1 Assembly occupancies with occupant loads of more than 300...shall be provided with an approved fire alarm system in accordance with 9.6.1 and 12.3.4...

V. Conclusion

Therefore, based on the above findings and our review of the above-quoted provisions of the NFPA Life Safety Code, the NFPA Fire Code, and the relevant section of the International Building Code adopted by this Commission, the Commission affirms the January 16, 2015, decision of the State Fire Marshal.

ORDER

For the foregoing reasons, on this 2nd day of March, 2015, the appeal filed by Wisp is DENIED, and the January 16, 2015, decision of the State Fire Marshal is AFFIRMED.


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