

**BEFORE THE STATE OF DELAWARE  
FIRE PREVENTION COMMISSION**

**In Re:**

**Tidewater Utilities, Inc.  
The Orchards Subdivision-Old Orchard Road (CR 269 A)**

**Present:**

Marvin C. Sharp, Chairman  
Bob Ricker, Vice-Chairman  
Willard (Bill) Betts, Jr.  
Kenneth H. McMahon  
Douglas S. Murray, Sr.  
David Roberts

Jeremy Homer, Esquire, Counsel for Tidewater Utilities, Inc.  
Bruce Patrick, Vice President, Tidewater Utilities, Inc.  
Joshua T. Turner, Staff Engineer Tidewater Utilities, Inc.  
Grover P. Ingle, State Fire Marshal  
R. T. Leicht, Office of the State Fire Marshal  
John P. Rossiter, Office of the State Fire Marshal  
Allison E. Reardon, Deputy Attorney General  
Sherry Lambertson, Executive Secretary

**SUMMARY OF EVIDENCE**

On October 21, 2008, the State Fire Prevention Commission met in the Fire Commission Chambers, Delaware State Fire School, Delaware Fire Service Center, Chestnut Grove Road, Dover, Delaware, after proper notice to all parties to consider the appeal by Tidewater Utilities, Inc. (“Tidewater”) from a decision by the State Fire Marshal Tidewater is seeking a variance from Delaware State Fire Prevention Regulations Part 2, Chapter 6, Section 6-5.3.2 (hereinafter “Regulation 6-5.3.2”) to enable Tidewater to install two (2) fire hydrants in The Orchards Subdivision (“The Orchards”)located on Old Orchard Road (CR 269A) in Sussex County Delaware.

1. **Bruce Patrick** was sworn and testified that he is the Vice president of Tidewater

Utilities Inc. He is familiar with the application filed by Tidewater to install fire hydrants in The Orchards. The application was admitted as Appellant's Exhibit 1. Mr. Patrick stated that The Orchards has a water service agreement with Tidewater. The original service was installed in 1987 and no hydrants were required. The Orchards is not required to have fire protection as part of the 2007 settlement with the Fire Marshal, approved by the court. However, Tidewater is seeking to fire protect The Orchards with two (2) hydrants for the benefit of their customers. Mr. Patrick showed the Commission a diagram/map of the placement of the hydrants.

Mr. Patrick stated, as detailed in the October 8<sup>th</sup> letter submitted by Joshua Turner, Staff Engineer, incorporated herein by reference, that the subdivision only requires a minimal flow rate of 500 gallons per minute (gpm) at 20 pounds per square inch (psi). Tidewater has no problem meeting the flow requirement which will actually be 800 to 1000 gpm but they do not meet the regulatory requirement for the dead end 6" water main required by Regulation 6-5.3.2. Tidewater is requesting a variance from the regulation because it meets the water flow requirements without any modification to its system and, therefore, believes that the cost of upgrading and interconnecting the water main is not necessary.

On examination by the Commission, Mr. Patrick stated that there are a lot of customers north and south of The Orchards that could lead to an expansion of the system in the future. However, Mr. Patrick acknowledged that he knew that before any major expansion or improvement could occur Tidewater would have to obtain the approval of the Fire Marshal and provide full fire protection. He further acknowledged that he understands that the current variance application is limited in scope and only applies to the two (2) hydrants being installed in The Orchards.

2. **Grover P. Ingle, State Fire Marshal**, was sworn and testified that he believed the matter needed to come before the Commission to grant a variance to Tidewater because there is no clear cut alternative that would provide an exception to the dead end 6” water main requirement. Regulation 6-5.3.2 has an exception for an 8” main but not for a 6” main. Fire Marshal Ingle agreed that The Orchards is on the list of those properties that do not currently require any fire protection. He also agreed that it is in the best interest of the residents of The Orchards to allow the two (2) fire hydrants to be installed in order to provide fire protection that does not currently exist provided that the variance is limited in scope consistent with Mr. Turner’s October 8<sup>th</sup> letter and with the further understanding that any expansions or renovations must be submitted to the Fire Marshal for review and approval.

### **THE LAW**

**§ 6608. Appeals to the State Fire Prevention Commission Procedure.**

(b) Appeals by any person aggrieved by an order or decision of the State Fire Marshal, the Marshal’s Deputy or Deputies, or Assistant State Fire Marshals based upon or made in the course of the administration or enforcement of this chapter or local regulations incorporating the State Fire Prevention Commission Regulations shall be taken to the State Fire Prevention Commission. Appeals by any officer, department, board or bureau of the State and the seven counties, cities and political subdivisions thereof affected by an order or decision of the State Fire Marshal, or the Marshal’s Deputy or Deputies or Assistant Fire Marshals, in the course of the administration or enforcement of this chapter or local regulations incorporating the State Fire Prevention Commission Regulations shall be taken to the State Fire Prevention Commission.

**§ 6609. Appeals to the State Fire Prevention Commission – Powers upon appeals.**

Upon appeals the State Fire Prevention Commissions shall have the

following powers:

. . .

(3) To authorize a variance from particular provisions of the regulations duly promulgated under § 6603 of this title where strict compliance with such provisions would entail practical difficulties or unnecessary hardships, provided such relief may be granted without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulations promulgated under § 6603 of this title.

**Part II, Chapter 6, Regulation 6-5.3.2:**

Fire Hydrants shall be supplied by not less than a six inch diameter main installed on a looped system or not less than an eight inch diameter main if the system is not looped or the fire hydrant is installed on a dead end main exceeding 300 feet in length.

**FINDINGS OF FACT**

The Commission finds the following facts to be true based on a review of the evidence, both testimony and documents received.

1. Tidewater Utilities has filed an application to place two (2) fire hydrants in The Orchards, a community that is not currently required to have fire protection.
2. Tidewater is capable of meeting the minimal water flow requirements but is not able to meet the requirements of Regulation 6-5.3.2 without substantial modifications to its system to upgrade and interconnect the water main.
3. The Fire Marshal does not oppose granting Tidewater's request for a variance from the requirements of Regulation 6-5.3.2 provided that it is limited only to the placement of the two (2) hydrants in The Orchards and provided that the variance Order makes clear that any future expansions or major improvements require the approval of the Fire Marshal.

**DISCUSSION AND CONCLUSIONS OF LAW**

The primary purpose of the Commission’s regulations is the protection of the public. Currently The Orchards is not required to have any fire protection. The Commission finds that it is in the best interest of the residents of The Orchards to grant the variance. The request is limited in scope to the installation of two (2) hydrants. Tidewater is able to meet the minimum water flow without any modification to the system.

The Commission concludes that a variance can be granted to Tidewater “without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulations.”

**DECISION AND ORDER**

It is this \_\_\_\_\_ day of December 2008, the Decision of the State Fire Prevention Commission that the Appeal of Tidewater in regard to the Orchards is granted and the variance is approved with the limitations discussed herein.

**IT IS SO ORDERED.**

**STATE FIRE PREVENTION COMMISSION**

\_\_\_\_\_  
Marvin C. Sharp, Jr., Vice-Chairman

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Bob Ricker, Vice-Chairman

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Willard (Bill) Betts

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David Roberts

Date mailed: \_\_\_\_\_