



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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Docket # 2007-04

**885 Washington Mountain Road
Washington, Massachusetts**

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½, relative to a determination of the Town of Washington Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by Rudolph A. Sacco and Katherine M. Sacco d/b/a Bucksteep Manor (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 885 Washington Mountain Road, Washington, Massachusetts.

B) Procedural History

By written notice dated December 28, 2006, the Town of Washington Fire Department issued an Order of Notice to the Appellant informing it about the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 885 Washington Mountain Road, Washington, Massachusetts. The Appellant filed an appeal of said order on February 9, 2007. A hearing relative to this appeal was originally held on December 12, 2007. However, shortly after the commencement of the hearing, the parties requested additional time to address certain outstanding issues with respect to the Certificate of Occupancy presented to the Board. The Board held a second hearing on the merits of the appeal on October 9, 2008, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Rudolph A. Sacco, owner and Robert C. Sacco, Esquire manager of the property and Attorney for the Appellant. Attorney Jeremia Pollard and Building Inspector Edwin May appeared on behalf of the Washington Fire Department.

Present for the Board were: Paul Donga, Acting Chairman; Chief Thomas Coulombe, Alexander Macleod; Peter E. Gibbons; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse, or modify the enforcement action of the Washington Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G½?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Affidavit of Robert C. Sacco, Esq. (authorized to represent Appellant)
3. Order of Washington Fire Department
4. Appellant's Detailed Memorandum and Accompanying Exhibits
5. Notice of Pre-Hearing Status Conference to Parties
6. Notice of Hearing to Parties
7. Affidavit of Cora Mitchell and items 1-10
8. 1st Notice of Hearing to Appellant
9. 1st Notice of Hearing to Washington Fire Department
10. Copies of Two Memoranda that accompany hearing notices
11. Drawing of Facility from Appellant
12. Certifications of Inspection
 - A. Issued December 22, 2007
 - B. Issued March 3, 2008
13. Letter from Attorney Sacco to Fire Chief and Building Inspector
14. Affidavit of Chief Stephen Deloye, Washington Fire Department

E) Subsidiary Findings of Fact

- 1) By Notice dated December 28, 2006, the Town of Washington Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 885 Washington Mountain Road, Washington, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. This property consists of several hundred acres of land and several buildings described generally as a conference center. There are several buildings described as inns, which feature residential rooms. The structure, which is the subject of the appeal, is referred to as the barn/carriage house. The structure is used for a variety of different social functions including weddings, parties, reunions, meetings, instruction, seminars, and other conference type uses.
- 2) During the 1970's and 1980's the Appellant indicated that the barn structure was definitely used as a nightclub and dancehall. There were live bands on weekends and cover charges paid at the door. However, the Appellant indicated that such use has changed in recent years.
- 3) According to a Certificate of Inspection issued on December 22, 2005, the barn/carriage house building had a use group classification of "A" with a total occupancy of 367 persons. A subsequent Certificate of Inspection issued on December 22, 2007 for said carriage house classified it as a "Dance Hall" with a use group of "A" and an occupant load of 200 persons. The current Certificate of Inspection, issued on March 7, 2008, classifies the building as a "Dance Hall" with a use group of "A-2" and a capacity of 130, including 12 employees. The

establishment also features the availability of a large tent located adjacent to the carriage house barn, which is used during larger weddings and functions. A promotional brochure indicates that when the tent is employed, in combination with the barn/carriage house, the facility can hold up to 250 guests. There was no separate Certificate of Occupancy or capacity limit submitted to the Board for the tent structure.

- 4) Based upon plans and testimony provided, the barn/carriage house features one large room used for dining set-up and a smaller room used for entrance, bar and appetizers. The building has no kitchen. It has a floor area of approximately 1,767 square feet.
- 5) The representative for the Appellant indicated that the barn/carriage house building is used mostly for wedding type events. However the facility also hosts other social events including parties, reunions, "squeeze box" musical group events, and has hosted CD music release parties and comedy nights. These events feature live or recorded musical entertainment for dancing purposes. The Appellant testified that in the past year or so the facility hosted approximately 24 weddings and approximately 3-4 non-wedding events. The facility is used on a seasonal basis and is shut down between November 1 and May 1.
- 6) According to the Appellant's testimony, a manager is always on duty during all events.
- 7) The facility has an "Innholders" liquor license that allows the facility to "expose, keep for sale, and to sell all kinds of alcoholic beverages." The license states that the hours of operation are Monday through Saturday from 8:00 a.m. to 2:00 a.m. and Sundays from 12:00 noon to 2:00 a.m.
- 8) The Appellant stated that the facility has a specific rental contract that all private parties must fill out and sign prior to their event, confirming the number of attendees for catering and set up purposes. The Appellant testified that meals are served at all events.
- 9) It is the Appellant's contention that the barn/carriage house building is operated as a function facility that serves meals as the primary attraction and is therefore not within the scope of the sprinkler law, based upon previous decisions of the board. The Appellant also indicated that if the facility were required to install sprinklers, a separate water tank is required due to the remote location of the facility and the unavailability of municipal water.
- 10) The representatives of the Washington Fire Department testified that the determination and Order to install sprinklers in the carriage house/barn was based upon a number of factors, including: the overall capacity limit of over 100 persons, the use group classification of "A" and most recently "A-2", the existence of a full liquor license, the frequent appearance of live or recorded music for dancing or entertainment purposes and other related entertainment. The Town indicated that the facility is an existing "non-conforming use" that has been grandfathered under the Town's zoning laws. Based upon the building's current use group classification of "A-2" and liquor license, which allows late night hours of operation, this establishment is legally able to operate as a dance hall or nightclub with no restrictions.
- 11) The Fire Department representative further testified that it is his belief that after the completion of the meal, the facility has the ability to transform into a dancehall or nightclub type event, regardless of whether the music is part of a wedding or private function. He also indicated that

the Appellant's own architect, hired by the Appellant to draw a floor plan, classified the building as a "dance hall" with an "A-2" use group classification.

- 12) Additionally, an affidavit filed by the Town's Fire Chief and submitted into evidence, indicated that the Town has no fire department and contracts with the Town of Becket for fire coverage. He also indicated that in the event of a fire, water would need to be shuttled in from a pond approximately four miles away. He estimated that it would be about 10-20 minutes for the Town of Becket to respond to a fire at the facility.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, required the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this then new law. The law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words "nightclub, dance hall, discotheque, bar or similar entertainment purposes". This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The Board indicated that such occupancies are characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;

- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) The most recent classification of this building as an “A-2” use group is significant and is consistent with many of the activities that have occurred within this building both in the past and at the present time. However, most of the events appear to feature a full meal. This Board has determined in prior decisions that such functions that feature a meal as the main attraction may not necessarily be considered the type of use within the scope of the s. 26G½ sprinkler requirements. (See ASAB case # 05-23, 91 Manville Street, Leicester, MA)
- 6) Accordingly, notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board has concluded, as the Appellant correctly indicated at the hearing, that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
 - 1. The facility is used for events that feature a meal as the primary attraction.
 - 2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
 - 3. Each event has a definite starting and ending time.
 - 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress.
 - 5. There are no significantly low lighting levels.
 - 6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State

Building Code (6th Edition), table: 780 CMR 1008.1.2.

7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s. 26G½, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 7) In applying the factors to this establishment it appears that on most occasions, the facility is used for many events that could be characterized as “privately organized dining events.” However, it is clear upon close examination that the facility has failed to meet all the criteria necessary for this Board to determine that sprinklers are not required.

Although, the facility is often used for events that feature a meal as the primary attraction, the Appellant failed to indicate the high level of management oversight and control necessary to warrant an exemption under the privately organized dining event situation. Although possibly inferred, since many of the events are weddings, there was little or no indication presented at the hearing indicating that the number of guests is limited by written invitation or limited ticket availability and does not therefore exceed the agreed upon attendance limit.

The facility uses a standard contract with facility customers. However, it does not include the terms and conditions relating to lighting, table set-up, definite ending or starting times or overcrowding.

Although the legal capacity limit of the barn/carriage house is currently set at 130 persons, the establishment offers various “wedding packages”. One of the packages allows customers to use a large tent structure in “combination” with the carriage/barn structure. (The Board notes that G.L. c. 148 § 1 defines structure to include “tents.” G.L. c. 148 s. 26G½ applies to all buildings and “structures.”) When the tent is so used, the facility indicates that it can accommodate up to “250 guests.” The Appellant testified that when the tent is used, the guests acquire their beverages at the bar in the barn/carriage house. The Appellant failed to establish the method used to prevent or control a potential overcrowding situation involving 250 guests who could be lined up at the bar in the tent/carriage house building with a capacity limit of only 130 persons.

Additionally, based upon the floor area of the barn/carriage house building, with its legal capacity of 130 persons, said building, clearly does not meet the “unconcentrated” occupant load requirement (not less than 15 feet (net) per occupant). A determination that a function area is “unconcentrated” is a crucial consideration for this Board in determining the applicability of s. 26G½ in such facilities that feature “organized private dining events”.

G) Decision and Order

Based upon the facilities current use as described at the hearing and based upon the aforementioned reasoning, the Board **upholds** the Order of the Washington Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½ and further orders the installation in accordance with the following deadlines:

1. The submission of plans and specifications for the installation of an adequate system of sprinklers within ninety (90) days of the date of this decision.
2. Complete installation of said system within six (6) months from the date of this decision.

H) Vote of the Board

Paul Donga, Acting Chairman	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	Opposed
Peter Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Paul Donga, Acting Chairman

Dated: December 2, 2008

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:

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