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

Automatic Sprinkler Appeals Board

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AIME R. DENAULT
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2014-01
130-132 Franklin Street
Clinton, 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, s. 26G, and Chapter 6, s. 201, relative to a decision of the Clinton Fire Department, requiring the Black Swann Realty Trust (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns/operates located at 130-132 Franklin Street, Clinton, Massachusetts.

B) Procedural History

By written notice dated December 3, 2013 and received by the Appellant on December 4, 2013, the Clinton Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On January 14, 2014, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on February 12, 2014, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Attorney James Walckner; Jeffrey Swann, property owner; and George Negrich, Jr. from McKenzie Engineering (Fire Sprinkler Designer). Appearing on behalf of the Clinton Fire Department was Chief Richard Hart.

Present for the Board were: Aime DeNault, Chairman; Maurice Pilette, Vice Chairman; Alexander Macleod; Peter Gibbons; 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 determination of the Clinton Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c. 148 s. 26G?

D) Evidence Received

1. Application for Appeal by Appellant
2. Appellant's Statement and Memorandum of Law (with exhibits)
- 2A. Quitclaim Deed – Black Swann Realty Trust
- 2B. Google Map – Franklin Street, Clinton
- 2C. Correspondence from Peter M. Reynolds, P.E., McKenzie Engineering Company, Inc. regarding flow tests
- 2D. McKenzie Engineering Company, Inc. – Hydrant Flow Test Report (May 22, 2013)
- 2E. McKenzie Engineering Company, Inc. – Hydrant Flow Test Report (June 17, 2013)
- 2F. McKenzie Engineering Company, Inc. – System Plans
- 2G. Correspondence to Chief Hart from Appellant's Attorney detailing scope of work (November 21, 2013)
- 2H. Order of Notice from the Clinton Fire Department (December 3, 2013)
- 2I. Property Tax Assessment
- 2J. Page 55 of the City of Worcester Engineer's street listing, in re: *Chief of the Fire Department of Worcester v. John Wibley, et al*, 24 Mass. App. Ct. 912 (1987)
3. Notice of Hearing to Appellant
4. Notice of Hearing to Clinton Fire Department
5. Copies of two Memoranda that accompany Hearing Notices
6. Invoice of costs to install iron pipe to first hydrant (Kilcoyne Brothers dated September 23, 2012)

E) Subsidiary Findings of Fact

- 1) In October 2012, the Appellant purchased a piece of property from the Archdiocese of Worcester. The parcel contained two buildings; one was once used as a church and the other, an elementary school. The school building is a two story brick structure consisting of 17,260 s.f. Appellant is planning extensive renovations to this building for commercial use, which will include facilities for the Appellant's software business. By written notice dated December 3, 2013 and received by the Appellant on December 4, 2013, the Clinton Fire Department issued a determination requiring automatic sprinklers to be installed throughout the commercial building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G.
- 2) After the purchase of the property, the church was renovated into a single family home. At or about the same time, the Appellant caused a 6" water line to be installed from the school building to the town's water main located on Franklin Street. This line was placed in anticipation of the need to install an adequate sprinkler system as a result of the substantial renovations. The cost to install this new 300' line was \$32,800.00.
- 3) On May 22, 2013, in preparation to renovate the school/commercial building, including the installation of a sprinkler system, the Appellant arranged for a water flow test at the hydrant location at the corner of Franklin Street and School Street. The test indicated that there was not adequate flow or pressure to supply water to the sprinkler system. A test was then conducted on the newly installed 6" water line at the commercial building location, which

indicated that the new line also would not provide adequate water and water pressure to the planned sprinkler system. There was testimony that there was probably enough water to supply initial fire control to 2-3 sprinkler heads, but not the entire system in accordance with code. As a result of these tests, it was concluded that portions of the Town's water main on Franklin Street was tuberculated (leaking). Testimony indicated that the line is very old.

- 4) According to testimony and some further tests, it appears that adequate water pressure to achieve a code compliant system is available in portions of the water main that are located 625 feet up Franklin Street or 825 feet in the other direction, as measured from the location of the newly installed line. The Appellant indicated that cost estimates to replace or reline the tuberculated line is between \$50,000.00 and \$70,000.00. Chief Hart indicated that the town is not planning to replace the line for another 3 to 5 years. The Appellant believes that it is the responsibility of the Town of Clinton to properly maintain and repair/replace the line and not his.
- 5) The Appellant concedes that planned renovations of the school building for commercial space will be considered "major alterations," thus triggering the sprinkler requirements of M.G.L. c. 148, s. 26G. However, based upon these circumstances, the Appellant believes that sufficient water or water pressure does not exist and that such circumstances, in accordance with language in s. 26G, creates an exemption from the installation of the sprinkler system.
- 6) It was Chief Hart's position that Appellant could install a holding tank and pump system or replace or reline the waterline and cited the case of *Chief of the Fire Department of Worcester v. John Wibley, et al.* 24 Mass. App. Ct. 912 (1987), in which the court upheld a requirement to install a 500 yard water main to supply water to a sprinkler system required by M.G.L. c. 148, s. 26G. Chief Hart indicated that the Court required the building owner in *Wibley* to install the waterline since the Appellant had legal access to a source of water. Chief Hart indicated that he believes the Town of Clinton would grant the Appellant legal access to install the additional line. Based upon these reasons, Chief Hart issued his order to install the adequate sprinkler system in the subject building, including the requirement to install the additional waterline, to properly and fully charge the system in accordance with the specifications in the Massachusetts Building code and referenced standard NFPA-13.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code." This law, as stated, reflects 2008 amendments to the statute. The new provisions apply to the construction of buildings, structures or additions or "**major alterations**" thereto, which total, in the aggregate, more than 7,500 gross square feet permitted after January 1, 2010.
- 2) The Board finds that the planned renovations in the building which is the subject of this appeal are considered "major alterations," thus triggering the enhanced sprinkler requirements of M.G.L. c. 148, s. 26G. The Appellant did not contest this finding.
- 3) The Board is concerned about the Town of Clinton's apparent lack of urgency to address this

public safety matter involving the repair of the existing tuberculated water main used to supply the fire hydrants on Franklin Street. However, the Board determines that the circumstances relating to the current lack of water pressure, particularly in light of the high threshold for such an exemption in accordance with the *Wibley* decision, does not waive the installation of the required sprinkler system throughout the subject building.

- 4) Although existing water pressure and flow is currently inadequate to meet a code compliant design, there was evidence to conclude that there is enough to provide a system with some initial fire control and alarm in the event of a fire. Additionally, the system can be augmented by a fire department pumper connection within four minutes. Certainly, this modified system is better than no system at all and is more consistent with the intent of s. 26, which is to provide an “adequate” level of fire protection pending the eventual repair of the water main by the Town of Clinton.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Clinton Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G. This determination requires the following:

1. The Appellant shall install an adequate system of automatic sprinklers throughout the subject building; and
2. The Appellant may employ the existing water pipe connected to town water on Franklin Street to supply available water to the installed system and shall install a standpipe to facilitate fire department pump apparatus to supplement water flow to said installed system. The Appellant shall also install a panel/alarm system that connects directly to Clinton Fire Department. This determination does not preclude an agreed upon technical alternate means to supply adequate water to the subject building. This modified system is required in anticipation that the Town of Clinton will ultimately repair the subject tuberculated water main. The Board is concerned about the town’s apparent lack of urgency to repair the existing tuberculated hydrant line on Franklin Street which provides a crucial public safety function.

This decision is limited to the Board’s jurisdiction to hear appeals relative to the requirements of M.G.L. c.148, s. 26G. The Board notes that the alteration of the subject building may trigger separate and distinct requirements under the provisions of the State Building Code, which is within the enforcement of the local building official and appellant jurisdiction of another adjudicatory body.

H) Vote of the Board

Aime DeNault, Chairman	In Favor
Maurice Pilette, Vice Chairman	In Favor
Alexander Macleod	In Favor
Peter Gibbons	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,



Aime R. DeNault, Chairman

Dated: April 9, 2014

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

James Walckner, Esq.
Walckner Law Office
131 Main Street, P.O. Box 206
South Lancaster, Massachusetts 01561-0206

Chief Richard J. Hart
Clinton Fire Department
555 Main Street
Clinton, Massachusetts 01510