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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 # 2015-01
105 Kingman Street
Lakeville, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26G and Chapter 6, section 201, to determine whether to affirm, reverse or modify the decision of the Lakeville Fire Department requiring the Appellant, Richard M. Chaves (hereinafter "Appellant"), to install automatic sprinklers in a building and proposed addition owned by the Appellant located at 105 Kingman Street, Lakeville, MA.

B) Procedural History

By written notice received by the Appellant on December 21, 2014, the Lakeville Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout an existing building and a proposed addition thereto, owned by the Appellant located at his property, 105 Kingman Street, Lakeville, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On January 8, 2015, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 11, 2015, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Richard M. Chaves and Vincent Sorrentino of Hannold Associates. Appearing on behalf of the Lakeville Fire Department was Deputy Chief David G. Goodfellow.

Present for the Board were: Aime DeNault, Chairman; Maurice M. Pilette, Vice Chairman; Andre R. Stallworth; Chief Thomas Coulombe; Alexander MacLeod; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Fire Department requiring sprinklers in the building located at 105 Kingman Street, Lakeville, MA, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statements in Support of Appeal
3. Order of Notice to the Appellant from the Lakeville Fire Department
4. Property Plans
- 4A. Office Renovation (cover sheet)
- 4B. Existing/Demo first and 2nd floor plans
- 4C. Proposed First Floor Plan
- 4D. Proposed 2nd Floor Plan
- 4E. Foundation & Roof Plan
- 4F. Reflected Ceiling Plans
- 4G. Proposed Elevations
- 4H. Proposed Sections
- 4I. Schedules
5. Notice of Hearing to Appellant
6. Notice of Hearing to Lakeville Fire Department
7. Copies of two Memoranda that accompany Hearing Notices
- 8A. Prepared Site Plan – Azor Land Science
- 8B. Statement accompanying Prepared Site Plan

E) Subsidiary Findings of Fact

1) By written notice received by the Appellant on December 21, 2014, the Lakeville Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in an existing building and an addition thereto, which the Appellant is in the process of constructing at his property located at 105 Kingman Street, Lakeville, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G. On January 8, 2015, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 11, 2015, at the Department of Fire Services, Stow, Massachusetts.

2) The Appellant testified that he is the principal of Bay State Sewage Disposal Company which is housed in an existing two story office building, which consists of approximately 6,300 s.f. The Appellant has applied for a building permit and is in the process of constructing an addition to said building that will consist of approximately 5,400 s.f. and will be used for the storage of vehicles used in the business operation. The existing building, including the addition thereto, will consist of approximately 11,700 s.f. in the aggregate.

3) The Appellant does not contest a finding that the building, combined with the new addition, is subject to the sprinkler provisions of s. 26G. However, it is the Appellant's position

that a sprinkler system is not required in this building and addition, as proposed, since there is insufficient water and water pressure to adequately supply such a sprinkler system. The Appellant testified that most of the Town of Lakeville is supplied by well water. The Appellant and the Appellant's design professional indicated that the existing well on the subject property provided water at a flow rate of only 8 gallons per minute and that this is significantly less than that required for an adequate sprinkler system. The Appellant indicated that Lakeville has a public water supply located more than 2 miles away from the subject building. He indicated that the adjoining municipality, the City of Taunton, has a water line located approximately 1,720 feet away from the subject building. The closest fire hydrant, also located in Taunton, is approximately 1,900 feet from the subject building. Appellant testified that he contacted the City of Taunton to discuss access to their water source and he was told that access would not be possible since his building is not located within the City nor is it near any Taunton water source. The Appellant did not receive a response to his request to representatives of Taunton for more details or a written reply regarding water access.

4) Appellant noted that the current provisions of s. 26G in part, states that "no such sprinkler system shall be required unless sufficient water and water pressure exists." Appellant indicated that based upon the facts and circumstances, his building should not be subject to the provisions of s. 26G.

5) Deputy Chief Goodfellow of the Lakeville Fire Department did not contest the facts regarding the lack of available water for the sprinkler system at this location and confirmed the conclusions indicated by the Appellant. The Deputy Chief indicated that, based upon his knowledge, the City of Taunton has allowed access to its water to several larger development projects in Lakeville that are very close to or adjoin the water main in Taunton. He was unaware of any general agreements or arrangements between the Town of Lakeville and the City of Taunton for water access. At the hearing, the Deputy Chief generally indicated that it was his conclusion that the Appellant lacked sufficient water and water pressure to adequately supply a sprinkler system required by s. 26G. However, it was the position of the Lakeville Fire Department that it is without the authority to waive the s. 26G sprinkler requirements.

F) Ultimate Findings of Fact and Conclusions of Law

1) The provisions of M.G.L. c. 148, s. 26G, states, (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 amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The provisions apply to "the construction of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*". (Sec. 6, Chapter 508 of the Acts of 2008).

2) The existing building, combined with the proposed addition, will consist of approximately 11,700 s.f., in the aggregate, of floor area. The Board finds that this amount is clearly more than the 7,500 gross square feet, which triggers the provisions of s. 26G. The Appellant does not contest this finding.

3) On October 14, 2009, this Board, under the authority of M.G.L. c. 30A, s. 8, issued a

written guidance document to assist heads of fire departments and building owners to understand the basic requirements of this law. In that document, the Board detailed the various changes in the law and provided guidance regarding the types of buildings or structures subject to the enhanced sprinkler protection requirements. In the document, the Board also provided guidance regarding the provisions of the statute that states that “no such sprinkler system shall be required unless sufficient water and water pressure exists.” This language, created an exemption for situations involving lack of sufficient water and water pressure. In determining cases involving this possible exemption, the Board indicated that it would be guided by the Massachusetts Appeals Court case of Chief of the Fire Department of Worcester v. John Wibley, et al. 24 Mass. App. Ct. 912 (1987).

In that case, the Court concluded that “the term “sufficient water and water pressure exists” means that the owner of a building or addition to which the statute applies must have access to a source of water sufficient to operate an adequate system of sprinklers, or the exemption applies. The source may be either on the land on which the new building or addition is constructed or off the land, provided that it is legally available to the owner of the building or addition.”

4) In this case, based upon the testimony and evidence received from the Appellant, the Appellant’s consultant and corroborated by the Lakeville Fire Department, it is clear that the Appellant has no source of adequate water or water pressure on the land on which the new building or addition is being constructed. Likewise, there is no sufficient and legally available water available off the Appellant’s land within the Town of Lakeville where the building is located. The Board also finds, based upon the testimony of both parties, that the Appellant does not have legal access to any source of water in the adjoining City of Taunton sufficient to operate an adequate system of sprinklers

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the evidence presented to the Board and for the reasons stated herein, the Board unanimously determines that the building located at 105 Kingman Street, Lakeville, MA is not subject the sprinkler requirements of M.G.L. c. 148, s.26G due to a lack of sufficient water and water pressure. Accordingly, the Order of the Lakeville Fire Department is hereby **reversed**.

H) Vote of the Board

Aime DeNault, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Andre R. Stallworth, Boston Fire Marshal	In Favor
Thomas Coulombe	Not In Favor
Alexander MacLeod	In Favor
George Duhamel	In Favor

I) Right of Appeal

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

SO ORDERED,



Aime R. DeNault, Chairman

Dated: March 17, 2015

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

Richard F. Chaves
105 Kingman Street
Lakeville, Massachusetts 02347

Chief Daniel E. Hopkins
Lakeville Fire Department
346 Bedford Street
Lakeville, Massachusetts 02347