



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

*Automatic Sprinkler Appeals Board*

*P.O. Box 1025 ~ State Road*

*Stow, Massachusetts 01775*

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PETER GIBBONS  
VICE CHAIRMAN

**Docket # 2015-08**  
**57 Fall River Ave**  
**Rehoboth, 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 Rehoboth Fire Department to require the owner of the proposed building, Loughlynn, LLC and its affiliate and lessee, ATS Equipment of Rhode Island (hereinafter both referred to as the "Appellant"), to install automatic sprinklers in a proposed building located at 57 Fall River Ave, Rehoboth, Massachusetts.

**B) Procedural History**

By written notice, the Rehoboth Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in a proposed building being built on Appellant's land located at 57 Fall River Ave, Rehoboth, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on June 29, 2015. On August 3, 2015, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held hearings on this matter on September 9, 2015 and October 14, 2015, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the September 9, 2015 hearing on behalf of the Appellant was Stephen J. Connolly, Owner/President of the Appellant Corporation, John M. Connolly, Jr., Vice President, and Domenic A. Rucco, General Contractor. Appearing on behalf of the Rehoboth Fire Department was Chief Frank Barresi and Building Commissioner John Santos. During the hearing the parties agreed, with the Board's assent, that a continuation of this matter was necessary to obtain and review additional information.

Present for the Board at the September 9, 2015 hearing was: Maurice M. Pilette, Chairman; Peter Gibbons, Vice Chairman; Jack Dempsey (designee of the Boston Fire Commissioner); Chief Thomas Coulombe; Alexander MacLeod; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

A second hearing was held on October 14, 2015. Appearing at this hearing on behalf of the Appellant was Stephen J. Connolly, Owner/President of the Appellant Corporation, John M. Connolly, Jr., Vice

President, and Domenic A. Rucco, General Contractor. Appearing on behalf of the Rehoboth Fire Department was Chief Frank Barresi and Building Commissioner John Santos.

Present for the Board at the October 14, 2015 hearing was: Maurice M. Pilette, Chairman; Deputy State Fire Marshal Peter J. Ostroskey, designee for the State Fire Marshal; Alexander MacLeod; and Aime DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

The Board noted that the hearing panel was not identical to the hearing panel of the September 9, 2015 hearing and that the panel members would take into consideration all the evidence presented at both hearings prior to rendering a decision. Neither party objected to proceeding with the hearing.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the determination of the Rehoboth Fire Department requiring sprinklers in the Appellant's proposed building, in accordance with the provisions of M.G.L. c. 148, s. 26G?

**D) Evidence Received**

1. Application for Appeal filed by Appellant
2. Order of Notice of the Rehoboth Fire Department
3. Statement in Support of Appeal and Associated Exhibits from Appellant
- 3A. Order of Notice of the Rehoboth Fire Department
- 3B. Copy decision in Worcester v. Wibley court case (*Chief of the Fire Department of Worcester v. John Wibley & Another*, 24 Mass. App. Ct. 912 (1987))
- 3C. Copy of ASAB decision 2010-06 Sherborn case
4. Notice of Hearing to Appellant (8/21/15)
5. Notice of Hearing to Rehoboth Fire Department (8/21/15)
6. Copies of two Memoranda that accompany Hearing Notices
7. Letter from Board of Health to Mr. Rucco regarding water availability in Rehoboth (8/17/15)
8. Large Scale Floor Plan of Proposed Building
9. Notice of 2<sup>nd</sup> Hearing to Appellant (9/21/15)
10. Notice of 2<sup>nd</sup> Hearing to Rehoboth Fire Department (9/21/15)
11. Copies of two Memoranda that accompany Hearing Notices
12. Floor Plan – proposed plan submitted by Appellant
13. Swansea Water District Letter (8/3/15)
14. Seekonk Water District Letter (7/28/15)
15. Letter from All About H2O, LLC Well Company (8/6/15)
16. Letter from Tri-State Sprinkler Company (9/3/15)

**E) Subsidiary Findings of Fact**

- 1) By written notice, the Rehoboth Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in a proposed building located at the property at 57 Fall River Ave, Rehoboth, Massachusetts. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G and was received by the Appellant on June 29, 2015. On August 3, 2015,

the Appellant filed an appeal of said determination with the Automatic Sprinkler Appeals Board. The Board held hearings on two dates as previously stated at the Department of Fire Services, Stow, Massachusetts.

- 2) The representative for the Appellant testified that the Appellant purchased the land located at 57 Fall River Avenue in Rehoboth, Massachusetts in order to construct a “morton style” building, constructed of steel and masonry to repair/house construction equipment for sale and lease. The Appellant’s contractor testified that the building features approximately 11,847 s.f. in total floor area. One portion of the building features the office, showroom and parts department and measures approximately 75’ x 60’ ft for a total of 4,500 s.f. of floor area. The other portion consists of the maintenance and garage areas which measure approximately 70’ x 105’ and consist of approximately 7,347 s.f. of floor area.
- 3) The representative for the Appellant stipulated at the hearing that the building, as planned/constructed, is well over 7,500 s.f. However, he indicated that the location lacks sufficient water and water pressure to supply the sprinkler system. He noted language in the applicable statute, M.G.L. c. 148, s. 26G, which states that “no such sprinkler system shall be required unless sufficient water and water pressure exists”. Appellant’s representative asserted that said statute creates an exemption from the installation of enhanced sprinkler protection in this building due to the lack of sufficient water and water pressure. In further legal support of this position, the representative referenced the case of *Chief of the Fire Department of Worcester v. John Wibley, et al.* 24 Mass. App. Ct. 912 (1987).
- 4) In support of the factual basis for Appellant’s position, its representatives testified that there is no municipal water or sewer available in the Town of Rehoboth. This statement was confirmed in a letter dated August 17, 2015 from the Rehoboth Board of Health and by the Fire Chief at the hearing. The Appellant also testified that they made attempts to obtain water from the abutting Towns of Swansea and Seekonk. Both towns issued written replies to the Appellant indicating that they were unable to provide adequate water to operate the sprinkler system.
- 5) The Appellant testified that water for domestic use is available on the property from a well which is 106 feet deep and could produce not more than 100 gallons per minute. However, an analysis of the well’s output from a sprinkler company suggests that an adequate sprinkler system for the proposed building would require at least 420 gallons per minute. When questioned further by the Board about the availability of water through the Town of Seekonk, the Appellant testified that the Seekonk water main is 6” inches wide and that the Town would not allow the Appellant to extend the main 3,000 feet to the property in question, because it would further limit the pressure and capacity of the main to other locations/customers within the Town of Seekonk. The Appellant’s contractor also stated that even if they could connect to the 6” main, it would be cost prohibitive, upwards of \$750,000.00.
- 6) The Fire Chief testified that he issued the determination to sprinkler since the building features over 7,500 s.f., the amount of floor area which triggers the enhanced provisions of s. 26G. He also indicated that potential hazards will be in the building due to its intended use. Such items could include: stored fuels, oils, solvents, chemicals, a battery charging station, and possibly welding activities. He confirmed that there is no municipal water in the Town of Rehoboth. The Chief also indicated that the nearest fire station is 3.8 miles away but is not currently staffed. He stated that the estimated response time to this location would be 8-12 minutes, depending on the time of day.

- 7) The representatives of the Appellant stated that in response to the Chief's concerns, they have agreed to install a 10,000 gallon water tank to supplement firefighting efforts in the event of a fire. The Fire Chief indicated that many businesses and building owners in town have installed such tanks voluntarily to aid the Rehoboth Fire Department in case of a fire. Upon further inquiry, the Appellant's representative indicated that an adequate sprinkler system for the building would require at least a 30,000 gallon tank in order to operate the system.
- 8) The Board inquired about any determinations issued by the Rehoboth Building Commissioner regarding possible sprinkler installation requirements for this building under 780 CMR, the State Building Code. The Commissioner indicated that he believes that the building, as presented, would need to be sprinklered under the State Building Code. However as of the date of the hearing he has not issued a written determination about this.

**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." The stated provisions reflect amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008.
- 2) The statute also states that "no such sprinkler system shall be required unless sufficient water and water pressure exists".
- 3) The proposed building will consist of approximately 11,847 gross square feet in floor area. This clearly exceeds the statutory 7500 s.f. threshold.
- 4) With respect to the Appellant's contention that the sprinklers should not be required due to the lack of sufficient water and water pressure, the board is guided by the language of the statute and related case law. In the case of *Chief of the Fire Department of Worcester v. John Wibley*, et al. 24 Mass. App. Ct. 912 (1987), the Massachusetts Appeals 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."
- 5) Based upon the testimony and evidence submitted by the representatives of the Appellant and confirmed by the Rehoboth Fire Chief, it is clear that the Appellant is unable to acquire legal access to any source of water or adequate water pressure sufficient enough to operate an adequate system of automatic sprinklers. There is no source of adequate water or water pressure available on either the land on which the new building is being constructed or from any source legally available from the Town of Rehoboth. Water is also not available from the adjoining towns of Swansea or Seekonk.

**G) Decision and Order**

Based upon the evidence presented to the Board and for the reasons stated herein, the Board unanimously **reverses** the Order of the Rehoboth Fire Department to require sprinkler protection in the proposed buildings to be located at 57 Fall River Avenue, Rehoboth pursuant to M.G.L. c. 148, s. 26G, due to a lack of sufficient water and water pressure.

It should be noted that this decision is based upon this Board's jurisdiction to only hear appeals of orders issued by the head of the fire department under the provisions of M.G.L. c. 148, s. 26G. Such jurisdiction is separate and distinct from any applicable requirements of 780 CMR, the State Building Code.

**H) Vote of the Board**

Maurice Pilette, Chairman	In Favor
Peter J. Ostroskey, designee, State Fire Marshal	In Favor
Alexander MacLeod	In Favor
Aime DeNault	In Favor

**I) Right of Appeal**

You are hereby advised 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,



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Maurice M. Pilette, Chairman

Dated: November 10, 2015

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

Stephen J. Connolly  
33 Locust Street  
Boston, Massachusetts 02125

Chief Francis T. Barresi  
Rehoboth Fire Department  
334 Anawan Street  
Rehoboth, Massachusetts 02769