



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

KEVIN M. BURKE
SECRETARY

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

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-93
50 West Street
Leominster, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26H; Chapter 6, section 201 and 530 CMR, relative to a decision of the Leominster Fire Department, ordering the installation of automatic sprinklers in a building owned and operated by Mr. Peter Cullen, (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 50 West Street, Leominster, Massachusetts.

B) Procedural History

By an Order of Notice dated July 7, 2005, the Leominster Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in Appellant's building located at 50 West Street, Leominster, MA, pursuant to the provisions of M.G.L. c. 148, s.26H. After receipt of the Order of Notice on July 9, 2005, the Appellant filed an appeal of this decision with the Automatic Sprinkler Appeals Board on August 23, 2005. The Board held a hearing on March 13, 2007 at the Department of Fire Services, Stow, Massachusetts.

Peter Cullen, the owner and Appellant, appeared on his own behalf. Appearing on behalf of the Leominster Fire Department were Chief Ronald M. Pierce and Deputy Chief William T. Ashton.

Present for the Board were: Thomas Coulombe, Acting Chairman; Commissioner Roderick Fraser; Steven P. Rourke, Marshal Designee; Alexander MacLeod; John Mahan; 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 Order of the Leominster Fire Department to

sprinkler the Appellant's building in accordance with the provisions of M.G.L. c.148, s. 26H?

D) Evidence Received

1. Application for Appeal by Appellant
2. Order of Notice of the Leominster Fire Department
3. Notice of Pre-Hearing Status Conference to Appellant
4. Notice of Pre-Hearing Status Conference to Leominster Fire Dept.
5. Notice of Hearing to Appellant
6. Notice of Hearing to Leominster Fire Department
7. Letter to ASAB from Parties indicating a settlement
8. Notice of Hearing to Appellant
9. Notice of Hearing to Leominster Fire Department
10. Leominster Adoption of 26H Bylaw

E) Subsidiary Findings of Fact

- 1) By Order of Notice, the Leominster Fire Department issued an Order to the Appellant requiring automatic sprinklers to be installed in Appellant's building located at 50 West Street, Leominster, MA in accordance with the sprinkler provisions of M.G.L. c. 148, § 26H. The Appellant received said notice on July 9, 2005. The Appellant filed an appeal of the Fire Department's order with this Board on August 23, 2005.
- 2) According to testimony and documentation provided by the Leominster Fire Department, the City of Leominster adopted the provisions of M.G.L. c. 148, § 26H on June 13, 2005. The Appellant does not challenge the legality of the Town's adoption of the law. The provisions of M.G.L. c. 26H provide for enhanced sprinkler requirements, on a local option basis, for certain buildings that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth". The law requires that existing buildings, subject to the law, install the required systems "within five years after acceptance of this act by a city or town".
- 3) According to the testimony of the Appellant, the building is currently being operated as a "sober house" lodging/boarding house with a capacity of approximately 11 persons who are unrelated to the person conducting the boarding home.
- 4) Appellant stated that he does not contest the determination of the fire department to declare the building a boarding house within the meaning of s. 26H. The Appellant testified that he would be willing to install a sprinkler system in the facility, but at this time, is unsure of the cost of the project or whether he would be able to afford the installation. The Appellant requested that his appeal be kept open until the cost of the project can be determined and plans can be produced. He stated that if the cost to install a sprinkler system is too cost prohibitive, he will sell the property.

- 5) Deputy Ashton stated that the Leominster Fire Department would consider the installation of a NFPA 13-R sprinkler system to address the cost concerns of the Appellant. A 13-R system may result in a cost savings without sacrificing the public safety intent of the law. The fire department indicated that the existing water supply and water pressure appear sufficient to support an adequate system of sprinklers.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The City of Leominster adopted the provisions of M.G.L. c. 148, § 26H, on June 13, 2005. This law provides for enhanced sprinkler requirements, on a local option basis, for certain buildings that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth". The law requires that existing buildings subject to the law install the required systems "within five years after acceptance of this act by a city or town".
- 2) The evidence presented at the hearing clearly indicates that this building is a house where lodgings are let to six or more persons who are not related to the person conducting it, within the meaning of M.G. L. c. 148, s. 26H. The Appellant does not challenge this finding. There was no evidence presented that would indicate that said house comes within any of the enumerated exemptions specified by the statute.
- 3) Appellant's request that he be allowed more than the 5-year installation time frame to comply with s. 26H is not supported by any circumstances or facts to support such an extension.
- 4) There was inconclusive evidence presented to support any determination regarding the Appellant's request for a modified or partial sprinkler system. However, the fire department indicated that such a system could be a possibility if the appropriate technical plan was submitted to the department.

G) Decision and Order

Upon a review of the evidence presented at the hearing and based upon the aforementioned reasons and findings, the board hereby **unanimously** determines that the building is subject to the sprinkler provisions of M.G.L. c. 148, s.26H. Accordingly, the Board **affirms** the decision of the City of Leominster Fire Department. However, this determination does not prevent the Fire Department, upon review of plans provided by the Appellant, to approve an alternative system of adequate sprinkler system protection, including, but not limited to, the possible installation of a system in accordance with NFPA 13-R. Such installation shall be completed in accordance with the statutory 5-year time frame (by June 13, 2010). If the Appellant chooses to sell his property, he shall notify

prospective buyers, in writing, of the requirement to install sprinklers pursuant to M.G.L. c. 148 s. 26H if said house continues to be used as a lodging or boarding house.

H) Vote of the Board

Thomas Coulombe, Acting Chair	In Favor
Roderick Fraser, Commissioner	In Favor
Steven P. Rourke, Marshal Designee	In Favor
Alexander MacLeod	In Favor
John Mahan	In Favor
George A. 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,



Thomas Coulombe, Acting Chairman

Dated: April 19, 2007

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

Peter Cullen
7 Gardner Place
Leominster, Massachusetts 01453

Chief Ronald M. Pierce
Deputy Chief William T. Ashton
Leominster Fire Department
19 Church Street
Leominster, Massachusetts 01453