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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
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*Automatic Sprinkler Appeals Board*  
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MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

Docket #05-12  
Natick, MA  
25 Pond Street

**Automatic Sprinkler Appeals Board**  
**Decision and Order**

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, Section 26H, Chapter 6, Section 201 and 530 CMR, relative to a decision of the Natick Fire Department, ordering the installation of automatic sprinklers in a building owned and operated by Mr. Roland Kelson, (hereinafter, the Appellant). The building, which is subject to the order, is located at 25 Pond Street, Natick, MA.

B) Procedural History

By an Order of Notice, dated 3/7/05, the Fire Department of the Town of Natick ordered the Appellant to provide for the installation of an adequate system of automatic sprinklers, forthwith, to remedy a violation of Chapter 148 s. 26H. On April 14, 2005 the Appellant filed an appeal of the Fire Department's order with this Board. The Board held a hearing on May 18, 2005 at the Department of Fire Services, Stow, Massachusetts. The Board requested the parties to submit briefs and the hearing, by agreement, was continued until June 8, 2005. On both May 18 and June 8, 2005 Mr. Roland Kelson appeared, represented by his counsel, Attorney John Mahaney. Appearing on behalf of the Town of Natick was Captain Salvatore Arena. Present for the Board were: Paul Donga, Acting Chairperson; Edward McCann; Steven Rourke, Thomas Coulombe and Brian Gore. 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 Natick 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
- 2) Order of Notice
- 3) Appellant's memorandum dated April 2005
- 4) Appellant's documents (tabs 1-7)
- 5) Notice to Fire Department
- 6) Notice to Appellant
- 7) Town of Natick by-law record and fire regulations
- 8) Certificate of Inspection dated 12/11/03
- 9) Lodging licenses/25 Pond Street (A)-(G)
- 10) Town of Natick, 2004 Commercial Property Card
- 11) Appellant's 2<sup>nd</sup> memorandum dated May 31, 2005
- 12) Fire Department's memorandum
- 13) Photos of 25 Pond Street, Natick #1-13 submitted by the Fire Department

E. Subsidiary Findings of Fact

- 1) By order of notice dated 3/7/05, the Fire Department of the Town of Natick ordered the Appellant to provide for the installation of an adequate system of automatic sprinklers "forthwith" in accordance with the sprinkler provisions of M.G.L. c. 148 s. 26H.
- 2) According to the testimony and Appellee's documentation, the Town of Natick adopted the provisions of c. 148 s. 26H on or about 1988. The Appellant does not challenge the legality of the Town's adoption and has stipulated to the validity of Natick's adoption of the law.
- 3) According to the testimony and evidence submitted by the appellant, the subject house is a multi-unit residence consisting of 3 apartments on the first floor, 3 apartments on the second floor and 6 individual rooms on the third floor. (5 rooms being let and 1 room used for storage).
- 4) Appellant testified there are a total of 11 units in the building (6 apartments) and (5 rooms) with 11 persons residing in the building, one each in every apartment and room.



- 5) Appellant testified that he has owned the subject property for 40 years and there have been no changes in the type of occupancy during that time; 6 apartments and 5 rooms for let, one room vacant or used for storage.
- 6) Appellant has not applied for a rooming/lodging house license from 1993 until his most recent application in 2005.

F. Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148 s. 26H provide for enhanced sprinkler requirements, on a local option basis, for lodging and boarding houses. Section 26H states in part... "For 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..."
- 2) M.G.L. c. 148 s. 26H is intended to require retroactive installation of sprinklers in subject lodging or boarding houses "within 5 years after acceptance by the City or Town". In the case of the Town of Natick, subject properties were required to have installed such sprinklers by 1993.
- 3) We do not find credible, the Appellant's testimony that the subject property has never let more than 5 rooms during his ownership of the premises. The Appellant, both by his testimony and submitted evidence, has contradicted his statements regarding this issue. At various times the Appellant has testified he had not rented more than 5 rooms for 40 years, 35 years [on his 2005 application (ex. 9)], since sometime in the 1970's and finally as of July 15, 1996 [as submitted in his memorandum of law.(ex. 1 and 11)] ). In addition, the Appellant testified he could not recall whether he applied for a rooming/lodging house license between 1993 and 2005. 1993 was the year Natick's sprinkler law became effective. The Board draws a reasonable inference that the Appellant's failure to apply for a license after 1993 was to avoid discovery of a 6<sup>th</sup> room being let on the premises which would have required the installation of automatic sprinklers
- 4) The Board does find credible, Appellant's admission that he was letting out a sixth room after the 1993 effective date for installation of automatic sprinklers. This evidence was corroborated by Appellant's admission of the same to Lt. Arena.
- 5) Had the Appellant not violated c. 148 s. 26H from 1993 to July 1996 the subject premises would have had installed therein, an adequate system of automatic sprinklers throughout. Had the Appellant then chosen to rent only 5 rooms, he would not have been able to disconnect or otherwise disable the automatic sprinkler system without approval of the Head of the Fire Department (c. 148 s. 27A). Given these facts, the Appellant should not be able to violate s. 26H as he has admitted, and benefit from his actions.

In addition, because the Appellant has shown a willingness to violate the law in the past, there is no reason to believe he has not done so or would not do so again. The 6<sup>th</sup> room has been available for let after 1993 and in fact, has been let. In such cases rooms available for let by 6 or more persons sufficiently trigger the requirements of s. 26H. To decide otherwise would require the fire department to "catch" the premises when it is actually occupied by 6 or more persons. This would frustrate the purpose of the statute, and require the fire department to engage in a "shell game" with the owner.

- 6) The Appellant submitted inspections conducted by the Town of Natick dated 9/23/98, 11/1/01, 11/1/02 and 12/11/03. Although the Appellant contends all of the inspections showed 5 rooms on the 3<sup>rd</sup> floor available to be let, the last inspection on 12/11/03 clearly shows 6 rooms on the 3<sup>rd</sup> floor. (ex. 8).
- 7) At the conclusion of the first hearing (which was continued until June 8, 2005) the Appellant was to allow for an inspection of the subject premises. He was warned by the Board that such inspection could be determinative on the issue. The Town of Natick Fire Department was not allowed access to the building to conduct a subsequent inspection. At the June 8<sup>th</sup> hearing, the Board was informed of the existence of an additional residential unit located in the basement of the property. This had not been previously disclosed by the Appellant until confronted with this information at the 2<sup>nd</sup> hearing. (the Appellant's counsel seemed genuinely surprised by this disclosure and there is no reason to believe that counsel knew of the basement unit). The Board draws a reasonable inference that the non-disclosure of the basement unit, the denial of access for inspection to the fire department and the Appellant's lack of credibility, indicates that the basement unit is an additional room for let, therefore totaling 6 room let at the subject premises. Accordingly, the Appellant has let 6 rooms in violation of s. 26H from 1993-1996. Appellant currently lets 5 rooms on the 3<sup>rd</sup> floor and 1 room in the basement totaling 6 rooms which require installation of automatic sprinklers.

#### G. Decision and Order


Upon a review of the facts as presented at the hearing, the Board hereby unanimously determines, based upon the aforementioned reasons, that the subject building is subject to the sprinkler provisions of M.G.L. c. 148 s. 26H. Accordingly, the Board affirms the order of the Town of Natick Fire Department.

#### H. Vote of the Board

Paul Donga (Presiding Hearings Officer)	In Favor
Brian Gore	In Favor
Edward G. McCann	In Favor
Steven Rourke	In Favor
Thomas Coulombe	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.

  
Paul Donga  
Acting Chairperson

Dated: August 4, 2005

cc: Captain Salvatore Arena, Natick Fire Department, 22 East Central Street,  
Natick, MA 01760

A copy of this decision and order was forwarded by certified mail, postage prepaid to:  
John Mahaney, Esq., 10 Eliot Street, Natick, MA 01760.