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

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-109
35 Fourth Street
Chelsea, 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 26G1/2, relative to a determination of the Chelsea Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Polish American Veterans, Post 13 (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 35 Fourth Street, Chelsea, Massachusetts.

B) Procedural History

By written notice dated August 10, 2005, the Chelsea Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 35 Fourth Street, Chelsea, Ma. The appellant filed an appeal of said order on September 23, 2005. The Board held a pre-hearing conference relative to this appeal on February 8, 2006. A full hearing before the Board was held on April 13, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Stanley Dzierzeski, Commander, and Roman A. Pucko. Chief Joseph Siewko appeared on behalf of the Chelsea Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Chief Thomas Coulombe, and Alexander MacLeod. 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 enforcement action of the Chelsea Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G 1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Written Statement in Support of Application for Appeal
3. Order of Chelsea Fire Department
4. Loss Runs from Berry Insurance for Club
5. Facsimile from Conn. Underwriters, Inc. regarding losses for Club
6. Photos of Club
7. Schedule of Club Events
8. Notice of Pre-Hearing Status Conference to Appellant
9. Notice of Pre-Hearing Status Conference to Chelsea Fire Dept.
10. Notice of Hearing to Appellant
11. Notice of Hearing to Chelsea Fire Department
- 12A Appeal Summary (submitted by Appellant at Hearing)
- 12B Order of Chelsea Fire Department
- 12C Certificate of Inspection
- 12D Floor Plan (Upper Level)
- 12E Floor Plan (Lower Level)
- 12F Letter from Atlas Alarm Company Corp.
- 12G Photographs

E) Subsidiary Findings of Fact

- 1) By Notice dated August 10, 2005, the Chelsea Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 35 Fourth Street, Chelsea, MA, in accordance with the provisions of M.G.L. c. 148, s.26G½. This building is owned and operated by the Polish American Veterans, Post 13, Inc., a non-profit organization. The club is open to members, their families and members guests.
- 2) The subject building, is described by the Appellant as a “multiple use two story brick structure with a flat roof”. The lower or “basement” level has a lounge or bar area often used for meetings. This lower level also contains a function hall often used for bingo games, meetings and for dining events. According to the Certificate of Inspection, issued on September 27, 2005, the building facility has not been assigned a use group classification under the State Building Code. The building has a total capacity of 541 persons. The lower level bar or lounge area has a listed occupancy of 45 persons and the

function area on this lower level has a capacity of 221 persons. The upper or street level consists of a large function hall area with a listed capacity of 275 persons.

- 3) Based upon plans and testimony provided, the lower level hall is approximately 83 ft x 40 ft. The members quarters lounge area on the lower level is approximately 22 ft. x 50 ft. The first floor main hall is approximately 41 x 73 ft, which includes a lounge foyer area with dimensions of approximately 61 x 23 ft..
- 4) The representatives for the Appellant indicate that the facility is used for a variety of events held by the club, including Friday night Bingo games. In years past the facility was frequently used for many functions including weddings, christenings and many types of parties. However, in recent years the frequency of such use has been dramatically reduced. Currently, the facility is used routinely and regularly on Friday nights for Bingo game events. Additionally, the club hosts Polka dances approximately four times per year. At these dances traditional Polish meals are served. The dances are held in the evening and are usually over by 9:00 P.M. The facility also routinely and regularly (approximately 26 times per year) hosts "ball-room dancing" events on Sunday afternoons. These events, feature a three-four-piece orchestra and dancing. According to testimony, the service of alcoholic beverages is limited since most of the attendees are senior citizens. These events feature limited food service. There was testimony that indicated that during these particular events the music is not performed at above normal levels and the lights are not set at a low light level.
- 5) According to the Appellant's testimony, during all events there is always a manager on duty who makes sure the events are held in accordance with club rules. They also indicated that the facility does not hold a liquor license. When they want to serve liquor they are required to obtain a special "one-day liquor license" from the City of Chelsea.
- 6) The Appellant stated that the facility did not have a specific rental policy, but indicated that a meal is usually served when the halls are rented out. If the renters wanted alcohol service, they would be required to apply for a 1-day liquor license under their personal name. The appellant also stated that rentals do not occur very often, and are not the facility's main source of income.
- 7) In support of the Chelsea Fire Department's position, Chief Siewko testified that the facility is very large and based upon the high occupancy of the facility (541 persons throughout) and due to the nature of the activities and the capabilities of the building, he believed that the building was subject to the new law and that a sprinkler system would be required.
- 8) The representatives of the Appellant indicated a desire to request an alternative or partial automatic sprinkler system but failed to present any details of such an alternative installation plan at the hearing.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148,

s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) Based upon the testimony, this establishment is used for a variety of social events. Some of these events, the dancing events in particular, involve many of the characteristics typical of the “A-2 like” occupancy as described herein. However some of these events, the polka dancing events in particular, appear to feature a full meal. This board has determined in prior decisions that such functions that feature a meal as the main attraction may not necessarily be considered the type of use activity within the scope of the s. 26G½ sprinkler requirements. (See ASAB case # 05-23, 91 Manville Street, Leicester, Ma.) In most instances, the guests who attend such organized dining events are present as the result of written invitation or limited ticket purchase. Such “organized” private dining events, by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. The tables and chairs are not positioned as to create ill-defined aisles. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. According to the testimony, the characteristics of such events are within the strict control of an on-site manager and are established by a written agreement.
- 6) Accordingly, notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board has concluded that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s.26G1/2. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
 1. The facility is used for events that feature a meal as the primary attraction.
 2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
 3. Each event has a definite starting and ending time.
 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress.
 5. There are no significantly low lighting levels.

6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s.26G1/2, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 7) The current use of this facility indicates that ballroom dancing events occur on Sunday afternoons on a regular and routine basis; at least 26 times per year. Such events feature music by a 3-4-piece orchestra, dancing and the service of alcoholic beverages. According to testimony such events do not feature a meal and therefore cannot be considered a “privately organized dining event” as discussed herein. Such use is clearly considered the type of activity consistent with that of a “dance hall” within the meaning of the statute.

G) DECISION AND ORDER

Based upon the facilities current use as described at the hearing and based upon the aforementioned reasoning, the Board **unanimously upholds** the Order of the Chelsea Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 and further orders the installation in accordance with statutory timeline stated in section 11, chapter 304 of the Acts of 2004 (see copy attached hereto).

1. The submission of plans and specifications for the installation of sprinklers by May 15, 2006 (or as otherwise directed by the head of the fire department) .

2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Paul Donga	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	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,



Maurice Pilette, P.E. Chairman
Chairperson

Dated: May 18, 2006

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY
CERTIFIED MAIL, RETURN RECEIPT TO:** Stanley Dzierzeski, Polish American
Veterans Post 13, Inc., 74 Statler Road, Belmont, Massachusetts 02478 **and 1st Class
Mail, Postage Pre-paid to:** Chief Joseph Siewko, Chelsea Fire Department, 307
Chestnut Street, Chelsea, Massachusetts 02150.