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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

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VICE CHAIR

Docket # 2005-22
67 Scott Road
Fitchburg, MA.

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 and Chapter 6, section 201, relative to a determination of the Fitchburg Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by The Finnish Center at Saima Park, Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 67 Scott Road, Fitchburg, MA.

B) Procedural History

By written notice dated 3-25-05, the City of Fitchburg Fire Department issued an Order of Notice to the Appellant informing it of 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 existing buildings or structures. The building subject to the order is located at 67 Scott Road, Fitchburg, MA. The Appellant filed an appeal of said order on 5-6-05. The Board held a hearing relative to this appeal on 6-8-05, at the Department of Fire Services, Stow, Massachusetts. After the hearing the case record remained open, without the need for further hearing, to receive additional documentation including a current Certificate of Inspection, three cost estimates, and a written certification from the Appellant Board of Directors relative to facility usage records.

Appearing on behalf of the Appellant were: Kathryn H. Flinkstrom, President of the Finnish Center at Saima Park, Inc., Leo J. Roiko, Vice President, Joseph D. Byrne and Henry Flinkstrom Facility manager. Deputy Fire Chief Stephen Morand represented the Fitchburg Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann, Brian Gore, Chief Thomas Coulombe and Stephen D. Coan. 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 Fitchburg Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Order of Notice
3. Detailed statement of details submitted by the Appellant including list of activities
4. Notice of hearing to Fire Department
5. Notice of hearing to Appellant
6. Copy of power point presentation pages 1-15
7. Fire department documents pages 1-5 containing rationale for determination
8. Floor Plan
9. Photographs # 1 through 11
10. Certificate of Inspection
11. Cost Estimates
12. Applicant's Certified Statement relative to facility usage.

E) Subsidiary Findings of Fact

- 1) By Notice dated 3-25-05, the Fitchburg Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 67 Scott Road, Fitchburg, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) According to the representative for the Appellant, the building is a single level concrete block built on a concrete slab. The building houses a function hall with an interior dimension of approximately 98' x 38'. In the middle of this function hall is an area of hard wood flooring measuring approximately 44' x 22'. Adjoining the function hall is another room with linoleum flooring, measuring approximately 21' x 24'. The area of function room covers approximately

3,724 s.f. and the adjoining room consists of approximately 504 s.f.. Also contained in the subject building is a kitchen, a men's room, ladies room, a small storage room and a small front entrance way.

- 3) According to the Certificate of Inspection issued by the City of Fitchburg Building Department on 6-23-05, this facility has a capacity of 200 persons and is classified as an "A-3" use group.
- 4) The appellant has submitted three separate cost estimates to install an automatic sprinkler system. The estimates are as follows: \$27,545.85; \$25,600.00 and \$27, 620. These costs do not include approximately \$10,000. of associated carpentry and related costs and a cost of \$66,949.61 for providing an upgraded and enlarged water supply for a new sprinkler system.
- 5) This building, known as the Finnish Center at Saima Park, is a private social and cultural center used primarily by those of Finnish extraction. The building is located on Saima Park which is used during the winter months for the sport of skiing. Upon review of the list of events that have taken place in this Center since October 2003 and planned through September 2006, it appears that most of these events consist of membership meetings, Finnish language classes, and ballet instructional classes (limited to 20 pupils). Several of the regular meetings during the course of the year involve the service of a meal. During the winter months, the facility, including the function hall is used for changing clothes, warming and bathroom facilities for those who engage in outdoor ski activities. From October, 2003 to present date, the facility held only two "dance party" type events that featured a jazz band, dancing and the service of alcoholic beverages events. During this same period the hall was rented out for only one private party that did not serve alcoholic beverages. It was also used for several post funeral gatherings during late morning hours.
- 6) The organization has been issued a license to serve alcoholic beverages and there is an area within the building that contains a service bar for serving beverages and food. However, this bar does not provided seating. The bar is used during organization functions only and is open neither routinely nor a regular basis during the course of a week.
- 7) The statement of activities and building description as presented by the appellant at the hearing was inconsistent with information that was provided to the Fire Department in an evaluation form based upon information provided by Mr. Henry Flinkstrom, the facility manager. In issuing its Order to install sprinklers, The Fire Department relied upon this information. Said information indicated that approximately 10 wedding and anniversary type events were occurring each year and that the organization was holding social events approximately 1 time per month. The appellants indicated that Mr. Henry Flinkstrom's statements, were based upon the organization's activities over three years ago when he was the organization's President. The current president, Kathryn Flinkstrom, indicated that such activities have dramatically been reduced over the past several years and that the facility has, in fact, held only two dance party events in the subject building during the past two years. The appellant provided documentation which lists the activities conducted within this particular building which has been certified by the organization's Board of Directors. This documentation confirms Kathryn Flinkstrom's description of recent activities within this particular building.

- 8) There was testimony about certain activities that also take place at a nearby “pavilion” operated by the appellant. Henry Flinkstrom indicated that when he gave the description of activities to the Fire Department, he also included some of the activities which take place in the outdoor pavilion. However, the Board notes that the outdoor pavilion and its design and use is not the subject matter of this appeal and 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) Additionally, this Board in a recent decision determined that, notwithstanding the appearance of live or recorded music for dancing purposes, 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, and
5. There are no significantly low lighting levels, and
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.

- 6) The building which is the subject matter of this appeal is currently designed and used for a variety of different purposes related to the activities of this organization. According to the evidence presented to this board such activities in this building appear to focus on events relating to cultural, educational, and the sport of skiing.
- 7) During the course of the past two years there have been several events that may have had “A-2 like” characteristics that this Board has determined to be typical of a nightclub, dance hall or discotheque. However, due to the limited frequency and occurrence of such activities, it is reasonable to conclude that these events are considered “temporary” in that they do not occur often or on a regular or routine basis. The provisions of M.G.L. c. 148, s.26G1/2 (4th paragraph) allows the temporary use of such places of assembly as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector. Additionally, it appears that several of the events described may be considered “organized private dining events”, not withstanding the existence of music for dancing purposes. Such use is allowed without the need to install a sprinkler system if all of the specific characteristics listed in Paragraph F5) (see above) are present.

G. Decision and Order

The Board hereby reverses the Order of the Fitchburg Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building, as currently used, does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose on a routine or regular basis. This decision is contingent upon the continued use of this particular building as described in the Board’s findings. If the appellant desires to continue to feature, on a temporary basis, “A-2 like” events after November 15, 2007, a permit is required as described herein. The Board notes that the installation of a sprinkler system under s. 26G1/2 or the need for a temporary use permit issued under said section is not required for “organized private dining events” if all of the characteristics are present for such events.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Edward G. McCann	In favor
Stephen D. Coan	In favor
Thomas Coulombe	In favor
Brian Gore	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

Dated: September 14, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Kathryn H. Flinkstrom, President, The Finnish Center at Saima Park, Inc.. P.O. Box 30, 67 Scott Road, Fitchburg, MA. 01420 **and** Deputy Chief Stephen R. Morand, Fitchburg Fire Department, 33 North Street, Fitchburg, MA. 01420