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

Automatic Sprinkler Appeals Board

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CHAIRMAN

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VICE CHAIR

Docket # 2006-67

**292 Green Street
Clinton, 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, section 26G½; Chapter 6, section 201 and the informal rules of evidence, 801 CMR, relative to a determination of the Clinton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Polish American Veterans Club, Inc. of Clinton (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 292 Green Street, Clinton, MA.

B) Procedural History

By written notice dated March 24, 2005, the Town of Clinton Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings. The building subject to the Order is located at 292 Green Street, Clinton, MA.

The Appeal was originally denied, as being untimely. A hearing was held on May 10, 2006, limited to the Appellant's motion to reconsider the denial of Appeal. Upon review after a hearing, the Board, by written decision, rescinded its previous determination and allowed the appeal to proceed and to be heard on the merits (see decision of case ASAB #: 06-67, dated June 10, 2006).

The Board held a subsequent hearing on the merits of the case on July 12, 2006. At said hearing, issues were raised regarding the uncertainty of the legal capacity and use group classification of the building according to Town records. The case was continued pending the resolution of said issues. Another hearing date was scheduled for May 9, 2007. However, the parties indicated that the capacity issues were not resolved and further continuance was necessary.

By written Motion dated December 5, 2007, Clinton Fire Chief Richard Hart, requested that the "stay" of the enforcement of his Order (see generally: M.G.L. c. 6, s. 201) to require a sprinkler

system pending this appeal be “lifted,” as it was his opinion that the further use of the subject building would pose “imminent peril to the occupants in event of a fire...”. Due to the alleged public safety immediacy of this matter, the Board, by telephone, informed the parties that the motion could be heard and ruled upon at the next available hearing date, scheduled for January 8, 2008. The parties appeared at said hearing and, at the Board’s suggestion, agreed to proceed on the merits of the case as they relate to the sprinkler requirements of M.G.L. c. 148, s. 26G½.

During the course of the hearing, Chief Hart indicated that many of the hazards referenced in his Motion to Remove the Stay had now been corrected. Based upon these corrections and considering the Board’s intention to render a determination on the merits of the s. 26G½ issues, Chief Hart withdrew his Motion to Remove the Stay. It is noted that the Attorney for the Appellant, at one point during the hearing indicated the possibility of requesting a further continuance of the matter. However, this request was subsequently withdrawn.

Appearing at the hearing on behalf of the Appellant was: Attorney William O’Neil; Paul Favreau, Function Coordinator; Richard A. Kinzer, PAV Club Commander; James Soldi, Bar Manager; Christopher Dziczek, Board of Directors and Robert Farragher, Director. Chief Paul Moore, Boston Fire Department, also signed-in but did not offer testimony on behalf of the Appellant. Appearing on behalf of the Clinton Fire Department was Chief Richard Hart and Thomas F.J. Dillon, Clinton Building Commissioner.

Present for the Board were: Maurice M. Pilette, Chairman; Commissioner Roderick H. Fraser, Jr.; Chief Thomas Coulombe; Peter Gibbons, John J. Mahan, Aime R. DeNault, 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 enforcement action of the Clinton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Memorandum in Support of Appeal by Appellant
3. PAV Constitution and Bylaws
4. Property Detail Sheet
5. Photographs of facility (8 pages)
6. Rental Contract for Facility
7. List of Contracted Functions – 2004/2005
8. Certificate of Inspection Issued 12/1/2005
9. Alcohol, Common Victualer’s, and Amusement Licenses and Permits to Sell Food
10. Order of Clinton Fire Department
11. Notice of Hearing to Reconsider Denial of Appeal to Appellant
12. Notice of Hearing to Reconsider Denial of Appeal to Clinton Fire Dept.
13. Notice of Hearing to Appellant (6/15/2006)
14. Notice of Hearing to Clinton Fire Department (6/15/2006)
15. Board’s determination regarding timeliness of appeal

16. Appellant's Summary Document
17. Fire Department measurements of facility
18. Notice of Hearing to Appellant (4/3/2006)
19. Notice of Hearing to Clinton Fire Department (4/3/2006)
20. Letter/Motion to Appellant's Attorney regarding Request for Motion to Remove Stay of Appeal by the Clinton Fire Department
21. Response from Appellant's Attorney on the Request to Remove the Stay of Appeal by the Clinton Fire Department
22. Appellant's Submissions (A-O)
23. Appellant's Summary Memorandum
24. Statement of Facts – Clinton Fire Department
25. Clinton Fire Department Pictures
26. Sprinkler installation cost estimate

E) Subsidiary Findings of Fact

- 1) By written notice dated March 24, 2005, the Town of Clinton Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, 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 292 Green Street, Clinton, MA.
- 2) The Appellant subsequently filed an appeal. After several motions were filed by the parties and after several hearing continuances (see detailed procedural history stated in paragraph B), a final hearing on the merits of this appeal was held on January 8, 2008, at the Commonwealth's Department of Fire Services, Room 109, at Stow, MA.
- 3) The Appellant, the Polish American Veterans Club, Inc. of Clinton, a nonprofit corporation, owns and operates a public assembly facility within a 3½ level wood frame building located at said 292 Green Street, Clinton, MA. The part of the facility currently being used for public assembly is on the first floor level. This level consists of a room described as the "Members Bar" area, which contains approximately 975 s.f. This bar area leads out to a main hallway, which features two lavatories and leads out to the main building entrance. This main hallway also has a separate doorway into a larger room referred as the "Reception Hall". The floor area of this reception hall, based upon documents submitted by the Appellant, consists of either 1,989 S.F or 1,679 S.F, depending upon what space is used to calculate said area. This reception hall room has several adjoining rooms or areas, including a kitchen, small hallway, utility room and a coatroom.
- 4) The building also features a basement level that at one time contained a small function hall, but is now used for storage. This basement area is in not indicated on any of the Certificates of Inspection and has not been assigned an occupant load. There is also a second floor (third level) which features several rooms or areas used for club storage and another room used as a residential unit.
- 5) There have been several Certificates of Inspection issued by the Town for this facility. One Certificate of Inspection, issued on December 1, 2005, (expiration date of November 30, 2006)

indicates a current use group classification of “A-3” for both the first and second floors with a total capacity of 213 persons throughout the facility. The Certificate indicates that the Members’ Hall (bar area) has a capacity of 49 persons and the Main Hall, a capacity of 164 persons. Subsequently, a more recent Certificate of Inspection, issued on February 5, 2007 lists the facility as having an “A-2” use group classification and indicates the identical capacity numbers as the 2005 Certificate. According to the Appellant, the February 2007 change in classification was accomplished without any prior notice to the facility. However, the most recent Certificate of Inspection, labeled as a “Temporary Certificate of Inspection”, was issued on December 27, 2007. It states that the use group classification is now A-3 and the capacity limits are identical to the previous certificates.

- 6) A letter dated December 19, 2007 from the Town of Clinton Building Official, Thomas F.J. Dillon, indicates that the 1st floor reception hall and 1st floor members’ bar are considered an A-3 assembly use group and that the upper floors are considered residential use. He indicated that the lower level is used for storage, which classifies the building as a mixed-use group.
- 7) The Attorney for the Appellant indicated that construction and/or renovations occurred within the building over fifteen years ago, which could have resulted in a reduction of capacity. He indicated that a letter dated January 3, 2008 from the Clinton Building Official, Thomas Dillon, suggested a reduction in the capacity limits to 43 persons for the member’s bar and 128 persons in the function hall. Notwithstanding, the opinions and conclusions regarding the desired reduction in capacity, no application for a building permit was ever filed to request such a reduction. As indicated by documentation filed by the Appellant, such an application would be required for such a change. The Appellant’s attorney indicated that the Appellant was reluctant to file a building permit, since such application may trigger the requirement for additional building code upgrades. Additionally it was noted by Chief Hart that there were no permits on file with the town of Clinton reflecting any of the past referenced construction or renovation activities.
- 8) The first floor function hall is carpeted, features a wooden dance floor and a combination of fluorescent and recessed lighting fixtures that can be dimmed. During functions in the hall, beverages, including all kinds of alcoholic beverages, are provided by a bartender from a service bar.
- 9) The representatives for the Appellants testified and submitted documentation indicating that during the year 2004, the larger first floor function hall was rented out for approximately 41 social function events. The room is rented out to both members and non-members. In 2005, there were 34 such social functions and 35 such events in the year 2006. Such events included funeral collations, Christmas and New Years Eve parties, Groom (stag) Parties, Jack and Jill parties, Super Bowl parties, Baby showers, Birthday parties, christenings, reunions, testimonials, dinner dances, graduation parties and golf tournament events. In addition to such functions characterized as “contracted functions”, the function room is also used for monthly membership meetings and regular Board meetings. At such social events, it appears that most of these events feature DJ recorded music for dancing and entertainment purposes.
- 10) The representatives of the Appellant indicated that at all these function events, food is served. They allege that the meal is the main attraction at these events and that these events are similar to the “privately organized dining events” that this board, in prior decisions, has determined

may not be within the scope of the sprinkler law. Additionally, there was testimony that certain rental events or “member only” gatherings also take place within the hall. They include events such as Super bowl parties, groom parties and holiday parties. The management uses a written contract for the rental events and employs an on site manager. Although the contract indicates the available hours of operation, it does not contain any statements or conditions about crowd control, lighting levels, or table and chair configuration or set-ups.

- 11) The representatives of the Appellant conceded that the first floor Members’ Hall (bar area) has characteristics of a typical bar. It is open for members and their guests, seven days per week and features a full liquor license, bar stools, tables and pool table. However, Appellant contends that the capacity of this portion of the building is 49 persons, less than the 100 capacity threshold required by s.26G½. They also submitted evidence indicating that this bar area is a separate portion of the building for s. 26G½ purposes, since it is both physically and operationally separate from the other areas of the building, including the 1st floor function area. In support of this conclusion, the Appellants indicated that the social events in the function hall are supported by a separate and independent service bar with bartender. Additionally, the bar and function areas are clearly separated by a permanent wall and several doors. They indicated that during functions there is always a separate bar and an additional bartender to serve the function guests. They also testified that it is their policy to prevent activities and patrons within the function area from overflowing into the bar area, or vice versa. A members’ only sign apparently exists on the outside of the members’ lounge door and smoking is allowed only in the member’s only lounge.
- 12) In support of the Clinton Fire Department’s determination, Chief Hart testified that the facility should be required to install sprinklers due to the overall occupancy of 100 persons, the existence of a bar, with bartender, full bar service with regular hours of operation. Additionally, Chief Hart believes that the first floor function hall routinely features activities similar to a dance hall or nightclub, including music by DJ for dancing and entertainment purposes and concentrated capacity. He indicated that the building is a wooden, multiple level structure that contains, in addition to club storage rooms, a residence on the second floor level.
- 13) Chief Hart also testified that he believes that a portion of the basement storage area is rented out to a contractor for the storage of equipment. He emphasized that the function area is windowless and that one side of the building has no access for firefighting equipment in the event of a fire. He also presented photographs of various conditions within the structure that, in his opinion, were code violations. He explained that he submitted these photographs to support his motion to remove the stay of enforcement based upon “imminent peril”. However, Chief Hart withdrew his motion at the hearing since most of the conditions have been corrected and based upon the assumption that the Board will soon issue a final decision of the case. The Chief wanted the Board to note that he looks favorably upon the organization and its membership.
- 14) Chief Hart also indicated that despite the Appellant’s assertion about the inaccurate capacity limits, the function hall’s current and legal capacity is clearly 164 persons and despite the passage of time and opportunity given by this Board, the Appellant has failed to legally pursue a reduction in capacity limit through the proper application of a building permit. It is Chief Hart’s opinion that it would be best if a sprinkler system were installed throughout the building and he confirmed that this is the intent of his original order. However, based upon his

understanding of the law he believes that at a minimum, sprinklers should be installed in the basement, 1st floor levels and in the stairwell leading to the residential unit.

- 15) The Appellant submitted documentation indicating that the possible total cost associated with the installation of an adequate sprinkler system could be as high as \$86,200. This amount includes extensive excavation and placement of new piping to the location, the installation of an adequate sprinkler system and related electrical work. This amount also included the possible additional cost to install a dry chemical system in the residential apartment areas (\$25,300.00).
- 16) The representative for the Appellants requested that if this board issues a determination requiring a sprinkler system, that the board allow the Appellant to install the system within six months of date that plans are approved by the head of the fire department. Additionally, the parties indicated that plans for the installation of sprinklers have been submitted to the fire department, but have not been reviewed or acted upon by the chief pending this appeal.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, 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.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, required 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).
- 3) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s. 26G½. This 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 acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes.” However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary were: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is 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. 26G½. 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.

- 4) In this case, the use group classification of this establishment has been changed over the course of two years, from an “A-3” to an “A-2” and back again, at least on a temporary basis, to its current “A-3” classification. Although the use group classification is an important factor in this Board’s consideration, it is this Board’s experience that reviewing the actual use and characteristics of each building, on a case-by-case basis, is often a more reliable indicator in determining whether “A-2 like” characteristics, as described above, exist in determining the applicability of the s. 26G½ sprinkler requirements.
- 5) The function hall area on the first floor level has an occupancy load of over 100 persons and is clearly used for a wide variety of social events. It appears that many of these events may be organized private dining events that feature a meal as the main attraction. As the representative of the Appellant correctly stated, this Board in previous decisions, has determined that under certain circumstances, a portion of 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. 26G½. In such prior decisions, this Board concluded that 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 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. 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. In such situations the occupant load is not typically concentrated or crowded. The existence of the characteristics of such dining events is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques 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; and
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.

Upon reviewing the evidence, the Appellant failed to sufficiently meet all of the above characteristics required for this board to make a determination that the first floor function area is not subject to the s. 26G½ sprinkler requirements. Said function hall clearly does not meet the “unconcentrated” occupant load requirement” (not less than 15 [net] per occupant) based upon the current legal capacity limit (164) and the current floor area of the hall, using either of the floor area figures presented (1,989 s.f or 1,679 s.f.). Appellant’s argument that this Board should use a smaller capacity number since the establishment rarely, if ever, has 164 persons in the function hall, has no merit. For this board to determine whether an establishment should install sprinklers based upon average attendance or business success, rather than legally established capacity limits, would frustrate the legislative intent of this law and result in arbitrary enforcement outcomes. Additionally, the rental contract for use of the subject function hall clearly indicates that the maximum guest allowance is not to exceed “164”.

- 6) Likewise, there was insufficient evidence to support a finding that the events that occur in the subject function hall which involve music, entertainment or dancing are “organized private dining events” as described above. Super Bowl parties, Jack and Jill stag or groom parties, and some other functions described at the hearing may feature food items or sandwiches. However, these are not the type of “organized private dining events” where food is the primary attraction as envisioned by this Board to support a decision to not require a sprinkler system. Additionally, the organization’s rental contract does not contain conditions about crowd limitations, occupant load, on site management, lighting levels, or details about table/chair configuration, which clearly establish a controlled environment necessary for the “organized dining event” determination.

- 7) Appellant’s argument that the members’ lounge is not subject to the sprinkler requirements since it is a separate portion of the establishment with a capacity of under 100 persons appears to have merit. In prior determinations this Board recognized the existence of buildings that feature a variety of characteristics and areas with separate capacity limits. In such cases the board noted that section 26G1/2, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “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 ... nightclub, dancehall discotheque or **bar...**”. (emphasis added). In determining whether the sprinkler requirement will be required, in whole or in part, in such buildings, the legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly requires an analysis of the building’s characteristics and floor plan to determine if a reasonable apportionment or separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building not subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will review the following characteristic:
 - a) Is that portion of the building used or designed for bar or entertainment purposes reasonably apportioned and separate from the other areas of the building? In determining this question there must be:
 - (1) A sufficient **physical** separation that exists between the entertainment or bar portion from the rest of the building, which prevents the occupants or activities of the bar from expanding into the other areas. Such separation can include a permanent wall or closed door.
 - (2) Additionally, there must be a separation in an **operational** or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 - b) If the separation exists, as described above, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?

- (8) Applying this analysis to this particular establishment, evidence indicates the existence of a physical separation between the “members’ lounge” or bar area and the rest of the building which prevents the bar activities from expanding into the dining area. This separation includes a permanent wall with a door that is capable of closing. The bar area also has a separate and

independent means of egress without the need to pass through other portions of the building. Additionally, there was testimony that a separation, in an operational and business context, exists which assures that the activities that occur in the bar area do not overflow or expand into the first floor function hall. The social events in the function hall are supported by a separate and independent service bar with an independent bar tender to serve function guests. The Appellant also indicated that it is the organization's policy to prevent activities and patrons within the function area from overflowing into the bar area, or vice versa. The placement of a "members only" sign on the outside of the members' lounge door supports this assertion.

- 9) The members' lounge has a separate capacity of 49 persons according to past and the current certificates of inspection. This amount is less than the statutory capacity of 100 persons or more, which would require the installation of sprinklers in this bar area.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Clinton Fire Department to install adequate sprinkler protection throughout the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½.

The first floor members' bar/lounge is not subject to the sprinkler requirements of M.G.L. c. 148, s. 26G½. This determination is conditioned upon (1) the Appellant maintaining the current physical and operational separation, as described in section (F)(7), which currently exists between said lounge area and the other areas of the building and (2) the occupant load of this lounge remains at 49 persons.

The Appellant shall install an adequate system of automatic sprinklers within the large first floor function hall and in all rooms, lobbies and spaces connected thereto, including all means of egress and entrances.

A fire alarm system and smoke detectors shall be installed throughout all areas of the building in accordance with NFPA 72, Fire Alarm Code, 2002 Edition.

The Appellant shall submit plans for such installations to the head of the Clinton Fire Department, consistent with this determination, within sixty (60) days of the date of this decision.

Installation of the required systems shall commence no later than July 1, 2008 and shall be completed by November 15, 2008.

H) Vote of the Board

Maurice M. Pilette, Chairman
Commissioner Roderick J. Fraser, Jr.

In favor
In favor

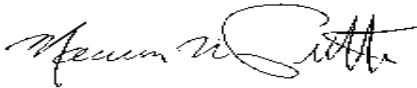
Thomas Coulombe
Peter Gibbons
John J. Mahan
Aime R. DeNault
George A. Duhamel

In favor
In favor
In favor
In favor
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: February 19, 2008

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

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