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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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JOHN J. MAHAN
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2010-14
828 Chief Justice Cushing Highway
Cohasset, 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, § 26G, and Chapter 6, section 201, relative to a decision of the Cohasset Fire Department, requiring the Chief Justice Cushing Highway Corporation (hereinafter referred to as the Appellant) to install automatic sprinklers throughout the building that it owns/operates located at 828 Chief Justice Cushing Highway, Cohasset, Massachusetts.

B) Procedural History

By written notice received by the Appellant on August 17, 2010, the Cohasset Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On August 30, 2010, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on October 13, 2010, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Donald E. Staszko, Building Owner; James M. Kelleher, Axiom Architects; and Charles J. Humphrey, Esq. Appearing on behalf of the Cohasset Fire Department was Chief Robert Silvia and Captain Mark H. Trask.

Present for the Board were: John J. Mahan, Chairman; Maurice M. Pilette, Vice Chairman; Frank Kodzis; Alexander MacLeod; 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 determination of the Head of the Fire Department requiring sprinklers in the building

located at 828 Chief Justice Cushing Highway, Cohasset, MA, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Appellant's Submissions in Support of Appeal
 - 3-1. Cohasset Fire Department Order dated August 17, 2010
 - 3-2. First Floor Plane A1, Axiom Architects
 - 3-3. Code Analysis dated April 12, 2010, Axiom Architects
 - 3-4. Compliance Alternatives dated April 2, 2010, Axiom Architects
 - 3-5. Town of Cohasset, Building Permit dated June 16, 2010
 - 3-6. Quality Automatic Sprinkler Corporation, Sprinkler System proposal dated May 1, 2010
 - 3-7. C. Spirito Inc., job quote, install 6-inch fire service line, dated May 1, 2010
4. Notice of Hearing to Appellant
5. Notice of Hearing to Cohasset Fire Department
6. Copies of two Memoranda that accompany Hearing Notices
7. Submissions from the Cohasset Fire Department (items 7A-7H)

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on August 17, 2010, the Cohasset Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed throughout a building owned/operated by the Appellant located at 828 Chief Justice Cushing Highway, Cohasset, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On August 30, 2010, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on October 13, 2010, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that the building at issue is a former automobile dealership that is being renovated to accommodate the tenant, Aubuchon Hardware, which occupies most of the building. The building was constructed in the 1970s and was described as a type 2, steel frame building with an 18-foot roof, and concrete block in-fill. It is a heavy timber structure with plank roofing. The existing building consists of approximately 17,520 sq. ft. of floor area. The scope of the renovations and modifications include: the installation of energy efficient insulation in walls and ceiling, floor coverings, new toilets, replacement lighting, new HVAC system with ductwork, new roof, the removal of automobile hydraulic lifts, the demolition and fill-in of several large garage doors, and the demolition of old offices. Such work is throughout every portion of the building.

According to the testimony of the parties, the Cohasset Fire Department was not aware of the planned renovations to the building until design plans were presented to the Fire Prevention Office on or about mid June 2010. Prior to that date, the Fire Department indicated that they

had not been in contact with either the building owner, the owner's architect or the Cohasset Building Department. Upon receiving and reviewing the plans, the Fire Department, based upon the nature and extent of the work and the total floor area of the building, determined that sprinklers were required to be installed throughout the building in accordance with the provisions of M.G.L. c. 148, s. 26G.

- 3) At the hearing, the Appellant testified that he believed that the property was not subject to the provisions of M.G.L. c. 148, s. 26G due to the fact that the size and shape of the building would not be altered. The Appellant did not believe that this work is considered a "major renovation" based upon the cost of the project and the costs of the sprinkler installation in relation to the fair market value of the building. In addition, the Appellant testified that fire protection considerations were designed as an alternative to a sprinkler system. Such considerations included: a 2 hour fire wall; a fire shutter interfaced with the fire alarm system which would be upgraded and monitored on a 24 hour a day basis; new fire exits; and a dual carbon monoxide/fire alarm system.
- 4) Documentation submitted at the hearing, included copies of two building permits, which indicated the total estimated value of the work. One permit indicated costs of \$350,000 for "tenant fit out of hardware store" and another \$80,000.00 for a new roof. However, the Appellant testified that the first permit cost included a \$50,000 fee for the architect and engineer for site work and a fire protection compliance alternative analysis. They assert that the actual construction costs were about \$280,000.00. The assessed value of the building, in accordance with documents from the Town of Cohasset is \$653,400.
- 5) Appellant indicated that the requirement to install a sprinkler system will cost approximately \$65,000.00. Appellant also indicated that an additional cost for the installation of a new 6-inch water main to service the system will be approximately \$40,495.00. However, the Appellant did not present any documentation to confirm these figures. Additionally, Fire Chief Silvia testified that several days before the hearing Tutella Engineering, on behalf of the Cohasset Water Department, conducted water flow tests. Such tests indicated that the water main was approximately 12 inches wide and that there was at least 2,900 g.p.m. capacity. The fire department, contrary to the Appellant's position, indicated that a fire pump and new 6-inch main would be unnecessary.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code." This law, as stated, reflects recent amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The new provisions apply to "the construction of buildings, structures or additions or *major modifications* thereto, which total, in the aggregate, more than 7,500 gross square feet permitted after January 1, 2010". (Sec. 6, Chapter 508 of the Acts of 2008). The law is only applicable if: (1) a new building or structure is constructed, (2) an addition is built onto an existing building or structure, or (3) major alterations or modifications are made to an existing building.

- 2) Based upon the facts presented at the hearing, the Board finds that “major alterations” are clearly occurring with respect to this building. Such activities are being conducted pursuant to a permit issued after January 1, 2010. The Board further finds that the building, including the additional space, consists of more than 7,500 gross square feet.
- 3) On October 14, 2009, this Board issued a written advisory relative to the newly amended M.G.L. c. 148, s. 26G (see copy attached hereto). In said document, the Board indicated that the determination of whether or not “major modifications” are occurring, involves several factors, including: the nature and scope of the work and the cost of the work in relation to the assessed value of the subject building. In addition, the Board indicated that major alterations or modifications are reasonably considered major in scope when such work affects thirty-three (33) % or more of the “total gross square footage” of the building, calculated in accordance with section 26G. Additionally, the Board indicated that major alterations or modifications are reasonably considered major in scope or expenditure, when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33) % of the assessed value of the subject building, as of the date of the permit application.
- 4) Clearly, the work affects every portion of this building, accordingly, the total gross square footage affected is well over 33% of the total square footage of the building. Additionally, the total cost of the work, regardless of whether or not the greater or lower estimates submitted by the Appellant are used in the calculation, clearly exceed 33% of the assessed value of the building.
- 5) The Appellant’s contention that sprinklers should not be required due to the cost of the sprinkler system in relation to the cost of the project and fair market value of the property is without merit. The Board finds that the cost estimates presented by the Appellant, particularly relative to the sprinkler installation, are unreliable and speculative at best. An example of this conclusion was the evidence submitted by the Fire Department which concluded that the significant installation costs estimates associated with acquiring adequate water and water pressure were not necessary based upon independent tests conducted on behalf of the Town Water Department. It should also be noted that the newly renovated interior characteristics of the building, including the lack of a suspended ceiling, make the extra cost and effort of installing sprinklers moderate in comparison to the total cost of the work contemplated.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence and testimony presented at the hearing, the Board hereby **upholds** the determination of the Cohasset Fire Department to install sprinklers throughout the subject building in accordance with the requirements of M.G.L. c. 148, § 26G.

The Board hereby determines that an adequate system of automatic sprinklers must be installed throughout the subject building prior to occupancy.

H) Vote of the Board

John J. Mahan, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Frank Kodzis, Boston Fire Marshal	In Favor
Alexander MacLeod	Opposed
Aime R. DeNault	In Favor
George A. Duhamel	In Favor

I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



John J. Mahan, Chairman

Dated: November 26, 2010

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

Charles J. Humphreys, Esq.
15 Brook Street
Cohasset, Massachusetts 02025

Chief Robert Silvia
Cohasset Fire Department
44 Elm Street
Cohasset, Massachusetts 02025