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GOVERNOR

TIMOTHY P. MURRAY
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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 CHAIR

Docket # 2010-18

**32-34 Howland Road
Fairhaven, Massachusetts**

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26G and Chapter 6, section 201, to determine whether to affirm an Order of the Fairhaven Fire Department requiring Charles Sourmaidis, (hereinafter referred to as the "Appellant") to install automatic sprinklers in a building owned by him located at 32-34 Howland Road, Fairhaven, MA.

B) Procedural History

By written notice received by the Appellant on November 4, 2010, the Fairhaven Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26G, and the Department's determination to require the installation of automatic sprinklers in the Appellants' building, located at 32-34 Howland Road, Fairhaven, MA. The Appellant filed an appeal of said Order with this Board on November 24, 2010. The Board held a hearing on this matter on February 8, 2011, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Charles Sourmaidis, property owner and Steven D. Gioiosa, P.E. Appearing on behalf of the Fairhaven Fire Department was Chief Timothy P. Francis.

Present for the Board were: John J. Mahan, Chairman; Maurice M. Pilette, Vice Chair¹; Thomas Coulombe; Frank Kodzis, Designee, Boston Fire Commissioner; and Aime DeNault. 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 determination of the Fairhaven Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c.148 § 26G?

¹ Mr. Maurice Pilette was not present for the entire hearing and did not vote at the conclusion of the hearing.

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal and Letter from Professional Engineer
3. Order of Notice of the Fairhaven Fire Department
4. Town of Fairhaven Fiscal Year 2010 2nd Half Real Estate Bill
5. Electrical Proposal for Property from Fred Borges Electric, Inc.
6. Drywall Proposal from Caetano's DPS, Inc.
7. Plumbing Proposal from United Plumbing and Heating, Inc.
8. Masonry Proposal from Guiomar's Masonry Corp.
9. Glass Proposal from Somerset Glass Co., Inc.
10. Quote on Materials from Plumber's Supply Company
11. Proposal on HVAC from unidentified company
12. Exhibit Plans from SITEC, Inc.
13. Additional Submission from Appellant (items 13A-13C)
14. Notice of Hearing to the Parties
15. Notice of Hearing to the Appellant
16. Notice of Hearing to Fairhaven Fire Department
17. Copies of two Memoranda that accompany Hearing Notices

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on November 4, 2010, the Fairhaven Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26G, and the Department's determination to require the installation of automatic sprinklers in the Appellant's building, located at 32-34 Howland Road, Fairhaven, MA. The Appellant filed an appeal of said Order with this Board on November 24, 2010. The Board held a hearing on this matter on February 8, 2011, at the Department of Fire Services, Stow, Massachusetts.
- 2) The Appellant testified that the building at issue is a one-story, masonry block construction commercial building totaling 10,280 s.f. The commercial property currently houses several businesses, including a Dunkin' Donuts (3,570 s.f.), a liquor store (1,810 s.f.), and an existing retail space (2,620 s.f.). The remaining 2,340 s.f. of the building is currently vacant and the property owner is proposing to subdivide that space into two separate and smaller retail spaces, each consisting of approximately 1,170 s.f.
- 3) The Appellant stated that he has received inquiries from at least one business seeking to rent the vacant space, but at a smaller size of 1,170 s.f. The Appellant believes that the alterations proposed are not considered "major," therefore not subject to automatic sprinklers pursuant to the provisions of M.G.L. c. 148, s. 26G.
- 4) The Appellant testified that the cost of the renovations would be approximately \$69,758.37 with an allowance of 20% for any incidentals for a total projected cost of not more than \$84,000. The Appellant argued that in order for any alterations or modifications to be considered "major" in scope, the work, according to a memorandum issued by the Board, would have to affect 33% or more of the gross square footage of the property or be greater than 33% of the assessed building value. Currently, the proposed renovations are approximately 10% of the overall

building value listed by the Town of Fairhaven at \$842,900.00. The area proposed to be altered is only 23% of the total gross square footage. Upon discussing possible future renovations, Appellant indicated that such renovations and construction within this building cannot be ruled out, particularly with the regard to possible additional alterations based upon the needs of new tenants.

- 5) The Appellant indicated that there is currently no sprinkler system in the building and in order to comply with the determination of the Fairhaven Fire Department, the cost would be approximately \$80,000.00, including fees charged by the Town of Fairhaven to connect to the water main. He indicated that this cost is not modest in comparison to the total cost of the renovations.
- 6) In support of the position of the Fairhaven Fire Department, Chief Francis testified that he issued his Order of Notice based his belief that the potential exists for further renovations of the subject property in the future, which may exceed 33% of the gross square footage of the property or be greater than 33% of the assessed building value.
- 7) Chief Francis stated that the current vacant space in the building would most likely require extensive build out and renovations by the building owner prior to occupancy by any new tenant. Such renovations would include: updates to the bathrooms, which currently do not comply with the relevant codes, additional egresses, and a new sewer line into the property. Chief Francis also believes that the scope of work needed to update the vacant spaces would eventually be significantly greater than the 23% of the total gross square footage claimed by the Appellant.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The relevant 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, 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*** (emphasis added) 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).
- 2) The Appellant does not contest a finding that the building is the type of non-residential building that is within the scope of the law. However, Appellant argues that the nature of the work currently taking place should not be considered a “major modification”, thus triggering the enhanced sprinkler requirements of s. 26G.
- 3) In a memorandum issued by this Board on October 14, 2009, this board issued a general advisory document to guide persons who may be impacted by the amendments to s. 26G. In the memorandum the board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board indicated that it would be guided by the

Massachusetts Appeals Court case of Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989).

In said case, the Court stated that the terms “major alterations” shall include “any work, not repairs, which is “major” in scope or expenditure, and which results in changes affecting a substantial portion of the building”. In its decision, the Court looked at the nature of the planned work and would require sprinklers throughout the building if “the extra cost of installing sprinklers would be moderate in comparison to the total cost of the work contemplated...” or “if the physical work being done is of such scope that the additional effort to install sprinklers would be substantially less than it would have been if the building were intact”. Accordingly, the Board indicated that it would consider certain factors established in the Congregation Beth Shalom case, to determine whether “major” alterations or modifications are taking place. Such factors include reviewing: **(A) the nature** of the actual work and **(B) the scope** of the work or cost/ benefit of sprinkler installation.

In determining the **nature** of the work, the Board will determine if the planned physical work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations.

- 4) In determining the **scope** of the work, the Board will determine if the alterations affect a substantial portion of the building. This requires a review to determine how much of the building is being affected by the work; **or** a determination that the cost of installing sprinklers is moderate in comparison to the total cost of the work.

To assist fire officials, building owners and construction project managers in making decisions, the Board established two presumptions that may be used to determine if the scope of the planned alterations or modifications are “major” thus requiring sprinklers to be installed throughout a building. They concluded:

- 1) 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.
- 2) 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 permit application.

It was the conclusion of the Board that if the nature of the work is the type of work described in **A** and also meets at least one of the two presumptions described in **B** above, then it can be reasonable to conclude that the alterations or modifications are “Major”, thus requiring sprinklers throughout the building.

- 5) Based upon the facts presented at the hearing, the Board finds that type of work is considered major, in that the planned physical work is the type of work that would make the effort to install sprinklers in those areas subject to such work, substantially less than it would have been if the building were intact. The planned work is not limited to minor repairs or

cosmetic in nature.

The type of work involving demolition and the erection of new walls, plumbing, electrical and the repositioning and/or filling in of existing doors and windows is the type of work that is considered significant. However, although the nature of the work is significant, the Board determines that the work is not major in scope or expenditure based upon the limits established by the Board in its October 14, 2009 memorandum. According to testimony, the planned work impacts only 23% of the total gross square footage. This amount is less than the minimum 33 % or more of the “total gross square footage” of the building, calculated in accordance with section 26G, to be considered “major.” This conclusion is further supported by the testimony indicating that the cost of the work at this time is not more than \$84,000. Currently, the proposed renovations are approximately 10% of the overall building value, listed by the Town of Fairhaven at \$842,900.00. This amount is significantly less than the 33% of the assessed value, the minimum amount that this Board has established to determine whether or not the costs are considered major in scope or expenditure.

- 6) In conclusion, the Board finds that the work, as described at the hearing, is not considered a “major alteration” requiring the enhanced sprinkler protection at this time. However, if this work was merely one phase of a series of modifications being conducted over a reasonably short period of time (i.e. 5 years or less), this Board may have reached a different decision. In its October 14, 2009 memorandum, the Board was concerned that a series of small, incremental projects could frustrate the Legislative intent of the new law. Accordingly, the Board indicated that it could view a series of construction activities, over a relatively short period of time (i.e. 5 years) to be considered a “major alteration” to the entire building, thus triggering the sprinkler requirements. However, according to Appellant’s testimony, at this time, such work is not planned

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence and testimony presented at the hearing, the Board hereby **reverses** the determination of the Fairhaven Fire Department to install sprinklers throughout the subject building in accordance with the requirements of M.G.L. c. 148, § 26G. The Board determines that the limited scope and expenditure of work proposed by the Appellant, as described by the Appellant at the hearing is not considered a “major alteration” at this time. However, both parties should be aware that any future renovations to this building, particularly within the next five (5) years, may be viewed in a cumulative manner as one long term project, eventually requiring the installation of automatic sprinklers in accordance with M.G.L. c. 148, s.26G.

H) Vote of the Board

John J. Mahan, Chairman	In Favor
Thomas Coulombe	In Favor
Frank Kodzis, Boston Fire Marshal	Abstain
Aime DeNault	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: March 17, 2011

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

Charles Sourmaidis
P.O. Box 351
Adamsville, Rhode Island 02801

Chief Timothy P. Francis
Fairhaven Fire Department
146 Washington Street
Fairhaven, Massachusetts 02719