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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

RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2011-16
55 Jonathan Bourne Drive
Bourne, 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 Bourne Fire/Rescue & Emergency Services Department, requiring the Noble Realty Trust (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns/operates located at 55 Jonathan Bourne Drive, Bourne, Massachusetts.

B) Procedural History

By written notice received by the Appellant on August 20, 2011, the Bourne Fire/Rescue & Emergency Services 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 September 16, 2011, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on October 12, 2011, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Attorney John M. Lamberti and Building Owner, Franco Raponi. Appearing on behalf of the Bourne Fire/Rescue & Emergency Services Department were Chief Martin Greene and Lt. David S. Pelonzi.

Present for the Board were: Roderick J. Fraser, Jr., Acting Chairman; 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 Board should affirm, reverse or modify the determination of the Bourne Fire/Rescue & Emergency Services Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Notice of the Bourne Fire/Rescue & Emergency Services Department
4. Plan from RESCOM Architectural, Inc. of the proposed Noble Building Addition
5. Notice of Hearing to Appellant
6. Notice of Hearing to the Bourne Fire/Rescue & Emergency Services Department
7. Copies of two Memoranda that accompany Hearing Notices
8. Appellant's Photographs
9. Appellant's Business Listing Sheet
10. Bourne Fire/Rescue & Emergency Services Department photographs (items A-E)

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on August 20, 2011, the Bourne Fire/Rescue & Emergency Services 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 September 16, 2011, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on October 12, 2011, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representatives for the Appellant testified that Appellant owns what they described as two attached commercial buildings, which currently, if combined, consist of 11,000 s.f. of floor area. They indicated that one building was constructed in 2000 and consists of 6,400 s.f. of floor area. The second building was built in 2003 and consists of approximately 4,600 s.f. of floor area and is occupied by a dog care business. Both buildings are constructed of steel framing and have a metal exterior. The Appellant is planning to build a 1,100 s.f. addition to the larger building, which was originally constructed in 2000. This additional space would be used by a carpet cleaning company operation that currently occupies said larger building.
- 3) The Appellant testified that at the time the second building was constructed in 2003, it was constructed as a separate structure with an 8" wide separate cinder block firewall erected between the two buildings. This wall extends 30" inches above the roofline. The Appellant argued that this masonry wall is a firewall, which separates two separate independent walls between two buildings with two exterior walls, built at two different times. The roofs are also separated by this masonry wall and feature separate peaks and valleys. They argued that each building as described should be considered separate for s. 26G purposes. To further support this conclusion, the Appellant indicated that there is no interior entryway that allows occupants to walk from one building to the other without exiting either building. Each building has separate occupancy, tenants, exterior entrances, utilities and systems and is occupied by separate, unrelated business entities that are operationally independent.
- 4) In support of the Bourne Fire/Rescue & Emergency Services Department's determination, the Fire Chief testified that the Order was issued based upon Appellant's proposed addition to a structure which is, in his opinion, currently one 11,000 s.f. building.

- 5) Although the Chief acknowledged the existence of a firewall that penetrates 30" above the roofline, he believes that the addition to the building would be considered a "major renovation" as that term is used in s. 26G and that the structure should be considered one building. He indicated that if both portions of this structure were considered one building, which is being added to and features a floor area over 7500 s.f., sprinkler installation is required. The Chief indicated that he was unsure of the reason why the firewall was constructed at the time of the construction in 2003. He also stated that the Town of Bourne never adopted the provisions of M.G.L. Chapter 148, section 26G, prior to the recent revisions to the law, which required the enhanced sprinkler requirements on a statewide basis as of January 1, 2010.

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** (emphasis added) 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 there are two separate buildings located at 55 Jonathan Bourne Drive, Bourne, MA for the purposes of M.G.L. c. 148, s. 26G. Although these buildings physically touch each other, in all other respects they are separate. Each building was constructed at a different time. One building was constructed in 2000 and consists of 6,400 s.f. of floor area, while the second building was built in 2003 and consists of approximately 4,600 s.f. of floor area. Each building features its own means of independent support at the point of attachment and are separated by an 8" wide cinder block firewall which extends from the foundation level to 30" inches above the roofline. The rooflines of each building are separated by the masonry wall and feature separate peaks and valleys. There are no interior means of ingress or egress that allow occupants to walk through one building to the other, thus requiring occupants exit to the outside to gain entry into the other building. Each building has a separate occupancy, exterior entrances, utilities, systems and is occupied by separate, unrelated business entities, which are operationally independent from the other. The rooflines of each building are separated by the masonry wall and feature separate peaks and valleys.
- 3) The Board finds that the Appellant's plan to add 1,100 s.f. of floor area to an existing building that consists of 6,400 gross square feet in floor area will result in a total aggregate of 7,500 s.f. in floor area. Neither party provided any evidence that would support a finding that this building, once completed, would exceed 7,500 gross square feet in floor area. Accordingly, the construction of the planned additional floor area does not trigger the installation of a sprinkler system under the provisions of M.G.L. c. 148, s. 26G.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence presented at the hearing and based upon the aforementioned reasons, the Board hereby **reverses** the determination of the Bourne Fire/Rescue & Emergency Services Department to install sprinklers throughout the subject building in accordance with the requirements of M.G.L. c. 148, § 26G. The Board notes that if there was any evidence, which indicated that this building would exceed 7,500 gross square feet in floor area, the Board would have reached a different decision.

H) Vote of the Board

Roderick J. Fraser, Jr., Acting Chairman	Opposed
Alexander MacLeod	In Favor
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,



Roderick J. Fraser, Jr.

Dated: December 2, 2011

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

Franco Raponi
P.O. Box 3139
Pocasset, Massachusetts 02559

Lieutenant David S. Pelonzi
Bourne Fire/Rescue & Emergency Services
130 Main Street

Buzzards Bay, Massachusetts 02532