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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

PAUL DONGA
VICE CHAIR

Docket # 2005-23
91 Manville Street
Leicester, 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 Leicester Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Leicester Social Club, Inc./Knights of Columbus (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 91 Manville Street, Leicester, MA.

B) Procedural History

By written notice dated 3-22-05, the Leicester 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 buildings or structures. The building subject to the order is located at 91 Manville Street, Leicester, 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.

The Appellant was represented by Mr. Steven LeBoeuf, Treasurer and Board member of the Leicester Knights of Columbus/200. Notwithstanding notification of the hearing, the Leicester Fire Department did not send a representative.

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 Leicester 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. Letter from Appellant
3. Order of Notice
4. Notice of hearing to Appellant
5. Notice of hearing to Fire Department
6. Photographs 6A, 6B, 6C

E) Subsidiary Findings of Fact

- 1) By Notice dated 3-22-05 the Leicester 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 91 Manville Street, Leicester, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. Said notice alleged that the Appellant's building was in fact in violation of said s.26G1/2.
- 2) According to the representative for the Appellant, the building is a single level wooden structure with a total floor area of approximately 6,000 square feet. The building houses two function halls. The main hall measures 49 feet x 59 feet with an occupancy of 200 persons. The smaller hall measures 26 feet x 46 feet with an occupancy of 102 persons. There is also a "members only" room which measures 20 feet x 43 feet with an occupancy of 27 persons. .
- 3) The Appellant stated that he obtained a verbal informal estimate that the cost to complete the installation of a sprinkler system could be up to \$250,000. However, this amount was unsubstantiated as there was no supporting documentation submitted. Of this amount approximately \$80,000. is related to obtaining a new connection to an adequate water supply.
- 4) Approximately one time per week the Appellant hosts a fundraising "Bingo" game event. During this event there are no low light levels, no entertainment by live band or recorded music, no dancing activities, the games tables are arranged in a manner that creates well defined aisles, allowing easy egress. Additionally, the hours of operation are between 6:30 pm and 9:30 pm, no alcoholic beverages are served and the occupant density load, based upon the legal occupancy calculation, is unconcentrated since it allows not less than 15 square feet (net) per occupant.
- 5) The Appellant rents out the two hall areas approximately 80 times per year for privately organized function activities. Such activities are characterized as follows: approximately 30 christenings, 25 birthday parties, 5 weddings and several graduation parties. The Appellant also hosts several other events including: an Irish Night, a scholarship banquet, mother's club dinners and a bowling banquet.

- 6) Appellant's representative testified that most of these events are privately organized and that the number of attendees is limited by pre-arrangement between the operators of the facility and the organizers of the event. Many of these events feature a disc jockey and music for dancing. However, the great majority of these events (90%) feature a full meal as the primary attraction. The meals are provided by the organization's caterer and are served either at the tables to seated guest or buffet style to guests who select their food and sit down at a table to eat.
- 7) The hours that the Appellant provides function facilities typically includes afternoon events, during the hours of 12:00 PM to 5:00 PM or evening events, from 6:00 PM to 11:00 PM. The facility is never open after 12:00 AM.
- 8) At events that feature alcoholic beverages, the Appellant provides a "standup only" service bar that serves soft drinks and alcoholic beverages to only function guests. The service bar is only open during the hours that a function is ongoing and at no other time. Last call is given ½ hour prior to the termination of the event. The bar never remains open after the function is terminated

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). The Appellant, notwithstanding the language contained in the Fire Department's Order of Notice, is not currently in violation of the sprinkler retrofit provisions of M.G.L. c.148, s.26G1/2 since the Appellant is not required to submit plans and specifications for the installation of sprinklers until 18 months of the effective date of the act (by May 15, 2006) and is not required to complete the mandated sprinkler installation until 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) Based upon the testimony of the Appellant, this building is used for many different types of events. However, most of the functions described appear to be organized private dining events that feature a meal as the main attraction. In most instances the guests who attend such organized dining events are present as the result of written invitation or limited ticket purchase. 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 a 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. The tables and chairs are not positioned as to create ill-defined aisles. 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. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. According to the testimony, the characteristics of such events are within the strict control of an on-site manager and are established by a written agreement.
- 6) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board concludes that 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, fund raisers, 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.

G. Decision and Order

The Board hereby reverses the Order of the Leicester 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, at present is used for organized private dining events that feature a meal as the main attraction. At present, the establishment does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose. This

determination is contingent upon the continued operation of the establishment in a manner consistent with the present characteristics as stated in section F-6.

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: July 13, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Mr. Steven LeBoeuf, 91 Manville Street, P.O. Box 143, Leicester, MA. 01524 **and** Deputy Chief Thomas Wood, Leicester Fire Department, 15 Water Street, Leicester, MA. 01524.