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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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AIME R. DENAULT
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2014-05
1399-1409 Suffield Street
Agawam, 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, s. 26G, and Chapter 6, s. 201, relative to a decision of the Agawam Fire Department, requiring Briarwood Twelve, LLC (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns/operates located at 1399-1409 Suffield Street, Agawam, Massachusetts.

B) Procedural History

By written notice dated April 18, 2014 and received by the Appellant on April 24, 2014, the Agawam 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 s. 26G. On May 28, 2014, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 11, 2014, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Lester Seidman, Manager, Briarwood Twelve, LLC and Yesenia Rodriguez, Property Manager. Appearing on behalf of the Agawam Fire Department was Fire Chief Alan Sirois.

Present for the Board were: Aime R. DeNault, Chairman; Maurice M. Pilette, Vice Chairman; Anthony DiNatale; and Alexander MacLeod. Peter A. Senopoulos was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Agawam Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c. 148 s. 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Letter in Support of Appeal
3. Order of Notice of the Agawam Fire Department (dated April 18, 2014)
4. U.S. Postal Service Tracking of Order of Agawam Fire Department to Appellant
5. Existing Building Diagram by Owner
6. Schematic of Building from Agawam Assessor's Office
7. Building Permit from Town of Agawam to "remove all non-bearing interior walls"
8. Cost estimates from Bay State Sprinkler Co., Inc.
9. Photo of Exterior of building (per Agawam Assessor's website)
10. Unofficial Property Card / Previous Assessments (Agawam Assessor's website – 2 pgs)
11. Notice of Hearing to Appellant
12. Notice of Hearing to Agawam Fire Department
13. Copies of two Memoranda that accompany Hearing Notices
14. Letter to Agawam Fire Chief from Building Inspector (dated June 9, 2014)
15. Unofficial Property Record (2 pages)
16. Permit for Plumbing Installation (issued 5/30/14)
17. Permit to Construct a Dwelling
18. Letter to Agawam Conservation Commission from Appellant (dated March 24, 2014)
19. Mass. Department of Environmental Protection – Enforcement Order (dated April 24, 2014)
20. Letter from Agawam Fire Department Inspector Duchesne (dated June 2, 2014)
21. Photographs (pre-marked by the Agawam Fire Department ("AFD"))
 - AFD – 3 (to the right or south inside of the structure; partition walls and bathrooms removed)
 - AFD – 4 (to the left or north inside of the structure; HVAC ductwork removed and suspended ceiling removed)
 - AFD – 5
 - AFD – 6 (some ceiling tiles remain in place)
 - AFD – 7 (large section of grid work and ceiling tiles removed)
 - AFD – 8 (entire length of the structure; highlighted portion is where demolition has occurred)
22. Letter from Michael Day, Plumbing & Gas Inspector, Town of Agawam (undated)

E) Subsidiary Findings of Fact

- 1) By written notice dated April 18, 2014 and received by the Appellant on April 24, 2014, the Agawam 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 s. 26G. On May 28, 2014, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 11, 2014, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representative for the Appellant testified that Appellant owns a single story, commercial building which is at least 50 years old. It is constructed of steel and concrete block and consists of approximately 8,300 s.f. The structure is approximately 206 ft. long, 40 ft. wide and was originally used by a dairy farm. Prior to the recent construction activity, the interior featured an ice cream stand and arcade games. These features are associated with a miniature

golf course located at the rear exterior of the building. A portion of the structure also houses a restaurant.

- 3) The Appellant recently sought a building permit to demolish several interior partition walls and remove a drop ceiling. The Appellant testified that the cost to remove the walls was \$3,500.00.
- 4) The Appellant initially testified that the work is very limited in scope and that the only modification is the removal of four interior partition walls, which are not load bearing. Upon questioning, further testimony by the Appellant indicated that the work also involves the removal of the majority of the existing drop ceiling and the complete demolition of two bathrooms. This demolition also involves the removal of associated wiring, HVAC components and plumbing. The Appellant indicated that the costs to rebuild/remodel the bathrooms is expected to be \$6-10,000.00 and that there would be additional project costs to install a new drop ceiling, polish the concrete floors, install electrical outlets, lights and associated plumbing, restoration of the HVAC and remodeling of the kitchen area. The Appellant indicated that by remodeling the space and opening the ceilings, the height of the interior building is now 14-15 feet at the peak. He indicated that the larger interior space will allow more video and arcade games.
- 5) The Appellant indicated that the cost to install a sprinkler system throughout the entire structure would be approximately \$125,000.00.
- 6) It is the Appellant's position that the work, as described, is not major or substantial and therefore, should not trigger the enhanced sprinkler requirement of MGL c. 148, s. 26G. The Appellant also indicated that due to the construction of the building, it is virtually non-combustible.
- 7) In support of the Agawam Fire Department's determination, Chief Sirois testified that the Agawam Fire Department became aware of the extent of the demolition/construction activities within this building on or about April 18, 2014. On said date, the Fire Department responded to a complaint by the operators of the restaurant which occupies a portion of the subject building. The complaint involved the emissions of fumes caused by the operation of a diesel bobcat used to facilitate demolition activities within the building. It was at this time, that a cease and desist order was issued with respect to the bobcat. An order was also issued based upon a review of the extensive nature and scope of the work occurring throughout the building. The Fire Department determined that major alterations were taking place affecting a substantial portion of the building, including the removal of walls, ceiling, lights, HVAC ductwork, bathrooms and the reconstruction of same.

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 in part, reflects amendments to the statute due to the enactment of Chapter

508 of the Acts and Resolves of 2008. The amendment arose in the aftermath of a tragic commercial building fire which occurred in Newton, Massachusetts in February, 2000, resulting in the death of five individuals. The 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) The subject building consists of approximately 8,300 s.f. in total floor area and its current use and occupancy is not within any of the enumerated statutory exemptions. The building clearly totals, in the aggregate, more than 7,500 gross s.f. in floor area.
- 3) Since this building is existing and is not undergoing an addition, the provisions of s. 26G will apply only if major alterations or modifications are made to the existing building. In determining whether major alterations are taking place, the Board has relied upon the factors stated in its October 14, 2009, guidance document which was referenced by the parties. In the document, the Board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board, generally guided by *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989)*, indicated that it would review factors such as: **(A) the nature** of the work and **(B) the scope** of the work or cost/ benefit of sprinkler installation. In determining the **nature** of the work, the Board indicated that it would determine if the 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. This Board also established two presumptions that could be used to determine if the **scope** of the alterations or modifications are “major.” The Board concluded that major alterations or modifications could reasonably be considered major in scope when: (1) such work affects thirty-three (33)% or more of the “total gross square footage” of the building, calculated in accordance with section 26G or (2) 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. 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.
- 4) In reviewing the evidence as a whole, the Board finds that major alterations are clearly taking place in this building and involves the demolition/renovation of more than 33% of the 8,300 s.f. building. Furthermore, the Board finds that the Appellant’s testimony regarding the nature and extent of the demolition and construction and the associated costs, is unreliable and self serving at best. Photographs of the work taking place clearly show the demolition of multiple walls and most of the suspended ceiling and involves the complete removal of two bathroom areas, including all associated electrical wires, fixtures, HVAC ventilation and plumbing. Future work to reconstruct the bathrooms, kitchen area and to restore remaining walls, floors and ceilings will be substantial and extensive. With respect to Appellant’s argument that sprinklers should not be required due to the type of construction materials used, the Board notes that section 26G does not consider such factors. In conclusion, the work is

major and substantial and is clearly the type of work that the Legislature envisioned would trigger enhanced sprinkler installation.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board hereby unanimously **upholds** the determination of the Agawam Fire Department to require the installation of an adequate system sprinkler protection throughout the building located at 1399-1409 Suffield Street, Agawam in accordance with the requirements of M.G.L. c. 148, s. 26G.

H) Vote of the Board

Aime R. DeNault, Chairman	In Favor
Maurice M. Pilette, Vice Chairman	In Favor
Anthony DiNatale	In Favor
Alexander MacLeod	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,



Aime R. DeNault, Chairman

Dated: July 17, 2014

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

Lester Seidman
c/o Madison Square Realty
174 South Blvd. – 2nd Floor
West Springfield, Massachusetts 01089

Chief Alan Sirois
Agawam Fire Department
800 Main Street
Agawam, Massachusetts 01001