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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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VICE CHAIRMAN

Docket # 2017-03
76 Mechanic Street
Fitchburg, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This administrative appeal is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, s. 26H and Chapter 6, s. 201, to determine whether to affirm, reverse or modify the decision of the Fitchburg Fire Department requiring the Fitchburg Housing Authority to install automatic sprinklers in a property owned by it and located at 76 Mechanic Street, Fitchburg, MA. The property is leased by the Fitchburg Housing Authority to Our Father's House, a non-profit program for individuals recovering from substance abuse.

B) Procedural History

By written decision dated March 8, 2017 and received by the Fitchburg Housing Authority, hereinafter referred to as the Appellant, on or about March 15, 2017, the Fitchburg Fire Department issued a determination to Appellant requiring automatic sprinklers to be installed throughout a building owned by the Appellant at 76 Mechanic Street, Fitchburg, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26H. On April 19, 2017, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 14, 2017, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Peter Proulx, Management Agent/Executive Director, Fitchburg Housing Authority and Judith Pasierb from Our Father's House Inc.

Appearing on behalf of the Fitchburg Fire Department was Chief Kevin D. Roy; Fire Prevention Officer Phil Jordan; and Fitchburg Assistant City Solicitor, Christine Tree.

Present for the Board were: Maurice M. Pilette, Chairman; Deputy Chief, Jack Dempsey, designee of the Boston Fire Commissioner; Alexander MacLeod; Chief Thomas Coulombe; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the decision of the Head of the Fitchburg Fire Department requiring sprinklers to be installed in Appellant's subject building pursuant to M.G.L. c. 148, s. 26H, should be affirmed, reversed or modified?

D) Evidence Received

1. Application for Appeal by Appellant
2. Memorandum in Support of Appeal
3. Order of Notice of the Fitchburg Fire Department
4. Unofficial Property Record Card
5. Certificate of Inspection – City of Fitchburg (exp. 5/9/2016)
6. Copy of Executed Standard Contract Form and Supporting Documents – ‘Our Fathers House’
- 6A. Cover letter from Executive Office of Health and Human Services (dated 3/1/2016)
- 6B. Signed Standard Form Contract (dated 2/12/2016)
- 6C. Purchase of Service – Attachment 3: Fiscal Year Program Budget
- 6D. Signed Standard Form Contract (dated 6/13/2003)
- 6E. Operational Services Division Website print out – Title “Supportive Case Management for Housing” – Contracts Awarded
- 6F. Contract Conditions - Supportive Case Management for Housing RFR # 390
- 6G. Additional Contract Specifications - Supportive Case Management for Housing RFR # 390
- 6H. Attachment 1 - Program Cover Page
- 6I. Purchase of Service - Attachment 2: Performance Measures
- 6J. Standard Questions
- 6K. Attachment A – Dept. of Public Health Request for Response Levels of Cooperative Activities
- 6L. Correspondence from Executive Director of Fitchburg Housing Authority to the Mass. Department of Public Health (dated 3/28/2017)
7. Notice of Hearing to Appellant (dated 4/26/2017)
8. Notice of Hearing to Fitchburg Fire Department (dated 4/26/2017)
9. Copies of two Memoranda that accompany Hearing Notices
10. Fitchburg Fire Department's Submission in Support of Order to Sprinkler Property
- 10A. Overview of 76 Mechanic Street – Sprinkler Requirements regarding Lodging Houses Over 5 Occupants
- 10B. City of Fitchburg – Adoption of M.G.L. c. 148, s. 26H (approved 9/4/2002)
- 10C. E-mail correspondence from John M. Deline, Jr., Deputy Commissioner of Water Supply for the Fitchburg DPW regarding water availability (dated 4/26/2017)
- 10D. Unofficial Property Record Card for 76 Mechanic Street, Fitchburg
- 10E. Photograph of 76 Mechanic Street, Fitchburg (dated 4/19/2017)
- 10F. List of Certified Sober Homes in Fitchburg from the MA Alliance for Sober Housing (MASH)
- 10G. 76 Mechanic Street Dispatch Log (dated 01/01/2014 – 04/26/2017)
- 10H. Copy of Mass. Appeals Court case *Massachusetts Sober Housing Corporation vs. Automatic Sprinkler Appeals Board & Another*, 66 Mass. App. Ct. 701
11. Request for Continuance from City of Fitchburg Law Department (dated 5/3/2017)

12. E-mail from the Board's Executive Assistant acknowledging receipt of Request to Continue (dated 5/3/2017)
13. 2nd E-mail from the Board's Executive Assistant advising Fitchburg Law Department to obtain Assent of the Appellant in order to continue hearing to later date (dated 5/3/2017)
14. Letter from City of Fitchburg Law Department confirming Appellant has agreed to Continuance until June (dated 5/5/2017)
15. E-mail from the Board's Executive Assistant Confirming Hearing Continuance until June (dated 5/8/2017)
16. 2nd Notice of Hearing to Appellant (dated 5/22/2017)
17. 2nd Notice of Hearing to Fitchburg Fire Department (dated 5/22/2017)
18. Copies of two Memoranda that accompany Hearing Notices

E) Subsidiary Findings of Fact

- 1) By written decision dated March 8, 2017 and received by the Appellant on or about March 15, 2017, the Fitchburg Fire Department issued a determination, requiring automatic sprinklers to be installed throughout a building owned by the Appellant and located at 76 Mechanic Street, Fitchburg, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26H. On April 19, 2017, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 14, 2017, at the Department of Fire Services, Stow, Massachusetts. At said hearing Judith Pasierb, Executive Director and representative of Our Father's House, Inc. indicated that she and Peter Proulx, the representative of Appellant, Fitchburg Housing Authority, were jointly representing the interests and positions of both our Father's House, and the Appellant (FHA), for the purposes of this matter before the Board. The Board notes that there was no objection to such representation, although our Fathers House, Inc. was not listed as a party on the application for the appeal.
- 2) According to testimony and documentation provided by the Fitchburg Fire Department, the City of Fitchburg accepted the provisions of M.G.L. c. 148, s. 26H on or about September 3, 2002. The Appellant does not challenge the legality of the City's acceptance of the statute.
- 3) The provisions of M.G.L. c. 148, s. 26H provide for enhanced fire protection requirements for certain buildings that are considered lodging or boarding houses. S. 26H states, in pertinent part: "For the purposes of this s. "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth." According to the third paragraph of the statute, any house subject to the law shall be equipped with automatic sprinklers within five years of the statute's acceptance by a city or town.
- 4) According to the parties and the submitted documents, the property and structure located at 76 Mechanic Street in Fitchburg is owned by Appellant, Fitchburg Housing Authority. Although owned by the Appellant, the Leominster Housing Authority manages the structure, which consists of a two story wood frame building with approximately 4,799, s.f.

of living area. It is classified as an “R-4- Group Residence” and has an occupancy of 13 clients and staff. There are currently 9 clients staying at the house. The Appellant leases the building for \$1,500.00 per month to the tenant, Our Father’s House Inc., a Massachusetts non-profit corporation which provides congregate living arrangements and support services for disabled women who are dealing with mental health issues and/or recovering from substance abuse. Each resident is responsible for paying 30 percent of her income towards the rental and other expenses of the house. The occupants do not have a lease with either Our Father’s House or the Appellant. The living arrangement is of a transitional nature and the occupants must abide by a set of house rules, including the requirement of sobriety. Individual bedrooms are located on the first and second floors and lodgers share a common kitchen, bathroom and living facilities. The representative of Our Father’s House stated that the program also currently operates under the name of Elizabeth’s House and has been operated since 2000.

- 5) The representatives of the Appellant, including the manager of Our Father’s House Inc., indicated that they believe the house is not subject to the provisions of s. 26H, since said law contains language that exempts “...**fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth**” (emphasis added). They believe that the house is considered a “group residence(s)...regulated by an agency of the Commonwealth.”
- 6) In support of their position, the representatives of the Appellant stated and provided documentation that the tenant, Our Fathers House Inc., contracts with the Massachusetts Department of Public Health (DPH) to provide congregate living and support services to the occupants. Such a program provides funds for both the Appellant and Our Father’s House pursuant to the Chapter 689 Housing Program. The Appellant’s representatives agreed with the City that the living arrangement and program do not require a license from any state agency. However, they indicated that they believe that the contract is regulated by DPH, that the program follows guidelines from DPH, and that DPH has assigned a contract manager that reviews the facility and program, including conducting site visits to assure that the terms of the contract are being adhered to.
- 7) The representatives of the Appellant indicated that the funding through Chapter 689, is specifically designated to Housing Authorities who are then able to lease properties to non-profit organizations, who serve special needs clients. In addition, while the Appellant (FHA) does not currently have funding available to install sprinklers, they indicated that they could request additional funding from the state for that purpose if the Fitchburg Fire Department’s order was upheld. The Board suggested that the Appellant’s representatives could request a continuance to provide more detailed documentation or legal arguments in support of their position with respect to the regulatory aspect of their arrangement. However, the representatives declined to do so.
- 8) Although the Appellant’s application referenced certain recent Federal District Court decisions dealing with the provisions of s. 26H, as applied to congregate living arrangements by disabled individuals, the Appellants representatives did not pursue any arguments or submit any evidence to challenge the provisions of s. 26H, based upon said decisions.

- 9) In support of the Fitchburg Fire Department's position, the City's representatives testified that the order to install sprinklers was based upon City property records which indicate that the house meets the requirements of M.G.L. c. 148, s. 26H. It is the City's position that Our Father's House Inc. operates the program, including the congregate living arrangement, pursuant to a contract with a state agency. They indicated that Our Father's House Inc., living arrangement and program are neither licensed nor regulated by any agency of the Commonwealth. Rather, Our Father's House is a party to a contract that they have entered into on a voluntary basis. Any requirements of the Our Father's House program are a condition to receive funding under the terms of the contract, voluntarily entered into, rather than a compliance requirement under the term of any state regulation. The attorney for the City of Fitchburg indicated that it was her opinion that the Chapter 689 program and related regulations, 760 CMR 6.00, establish a funding mechanism for local housing authorities to provide housing for occupants who have special needs who are under a direct lease between each tenant/occupant and the housing authority. They believe that since the current lease is between the Appellant (FHA) and Our Father's House, Inc., rather than to the actual occupants, the arrangement is not within the scope of said regulation.

- 10) The representatives for the City also argue that the "regulated group home" exemption of s. 26H should be applied narrowly to only include those group home situations that are directly licensed or regulated by a state agency with reasonably clear and direct oversight jurisdiction through specific regulations promulgated by a state agency. They indicate that to interpret the state regulatory exemption so broadly would render the provisions of s. 26H meaningless, since all buildings, are in fact subject to some form of state regulation. Examples include: the State Building Code, Fire Safety Code, Plumbing and Gas code and the State Health code.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about September 3, 2002, the City of Fitchburg adopted the provisions of M.G.L. c. 148, s. 26H. Appellants do not oppose this finding.

- 2) M.G.L. c. 148, s. 26H, requires the installation of an adequate system of automatic sprinklers installed in accordance with the state building code in certain lodging or boarding houses. The statute requires installation of said system in all applicable houses within five years after acceptance of the law by a City or Town. The statute defines a "lodging house" or "boarding house" as a house ". . . where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it . . ."

- 3) The Appellant, (FHA) leases the home at 76 Mechanic Street to Our Father's House Inc., a non-profit corporation that currently provides communal living arrangements to nine individuals who are not related "within the second degree of kindred to the person conducting it". The organization provides a supportive environment for those recovering from mental health and/or substances abuse issues.

- 4) The Board finds that the house located at 76 Mechanic Street is a lodging or boarding house, as defined in s. 26H, since room and board is provided by Our Father's House, Inc.

for transient lodgings to six or more persons "...not within the second degree of kindred to the person conducting it . . .". But for "the regulated group home exemption", the Appellant does not contest a finding that the subject house and living arrangement would otherwise be considered a "lodging house" or "boarding house" as defined in the statute and subject to the enhanced sprinkler requirements. The Appellant's representatives agree with this Board's finding that the house and living arrangement is neither licensed, nor required to be licensed, by any state agency.

- 5) The Board further finds that the subject house owned by the Appellant (FHA) and operated by My Father's House, Inc. is not exempt from the provisions of s. 26H, since it is not a group home "regulated" by a state agency. Upon close review of the testimony and evidence submitted to this Board, the Board determines that house owned by the Appellant and leased to and operated by Our Father's House, Inc. is not **regulated** (emphasis added) by an agency of the Commonwealth as that term is used in s. 26H. The lease arrangement and operation of this group lodging house is not subject to or conditioned upon compliance with any regulatory requirement, but is rather based upon a contractual relationship between the Appellant and DMH that Our Father's House, Inc. has entered into on a voluntary basis. Any requirements or conditions that Our Father's House, Inc. must comply with are related to conditions that must be met in order to receive the funding under the terms of the state contract, rather than a compliance requirement under the mandate of any agency regulation. As indicated at the hearing, there are clearly certain "group home" situations that can only be operated in the Commonwealth if they are directly and specifically licensed to do so by a state agency and/or subject to direct compliance with specific regulations promulgated by a state agency. To find that the operator of this group home is "regulated", as that term is used in s. 26H, by a state agency merely because it has voluntarily entered into a contract with a state agency to provide certain services or living arrangements, would frustrate the public safety intent of this law which is to provide enhanced life safety protection in the event of a fire.
- 6) Notwithstanding the Appellant's general reference to a Federal District Court decision in the Appellant's appeal application that discusses the provisions of s. 26H, as applied to congregate living arrangements by disabled individuals, Appellant's representatives indicated at the hearing that they were not going to pursue any such argument or submit any evidence to challenge the provisions of s. 26H, based upon said decision. The Board notes that said decision was based on the Federal District Court's interpretation of certain language in the Commonwealth's Zoning Control Act. Absent a determination by a court of law, which clearly reconciles or invalidates the enhanced public safety purpose of M.G.L. c. 148, s. 26H, as applied to the circumstances of this case, it is reasonable for the Board to conclude that the statute remains valid.

G) Decision and Order of the Automatic Sprinkler Appeals Board

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Fitchburg Fire Department requiring the installation of an adequate system of sprinklers throughout all portions of the subject building used and/or occupied for boarding or lodging purposes in accordance with the provisions of M.G.L. Chapter 148, s. 26H. This decision is subject to the following conditions:

- 1) Plans for the installation of sprinklers shall be submitted to the Head of the Fitchburg Fire Department within six (6) months from the date of this decision; and
- 2) The installation of an adequate sprinkler system shall be completed within twelve (12) months from the date of this decision.

H) Vote of the Board

Maurice Pilette, Chairman	In Favor
Jack Dempsey, Boston Fire Marshal	In Favor
Chief Thomas Coulombe	In Favor
Alexander MacLeod	Opposed
Aime DeNault	In Favor
George 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 s. 14 of chapter 30A of the General Laws.

SO ORDERED,



Maurice Pilette, P.E., Chairman

Dated: August 3, 2017

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

Peter Proulx, Mgmt. Agent / Director
Fitchburg Housing Authority
c/o Leominster Housing Authority
100 Main Street
Leominster, Massachusetts 01453

Chief Kevin D. Roy
Fitchburg Fire Department
33 North Street
Fitchburg, MA 01420

Lt. Phil Jordan
Fitchburg Fire Department
33 North Street
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