

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

DANIEL BENNETT
SECRETARY

CHIEF THOMAS COULOMBE
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2018-01
405 Northeast Main Street
Douglas, Massachusetts

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 26G½, relative to a determination of the Douglas Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Slovak Catholic Sokol Gymnastics Club, Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 405 Northeast Main Street, Douglas, Massachusetts.

B) Procedural History

By written notice dated November 20, 2017, the Douglas Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of M.G.L. c. 148, s. 26G½, 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 405 Northeast Main Street, Douglas, Massachusetts. On January 5, 2018, the Appellant filed an appeal of the departments' determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 14, 2018, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Larry Bombara, Past President; Randy Manyak, President; and Maureen Gallant, Bar Manager. Appearing on behalf of the Douglas Fire Department were: Chief Kent Vinson; Fire Inspector John C. Coyne; and Larry Lench, Douglas Building Inspector.

Present for the Board were: Chief Thomas Coulombe, Chairman; Maurice M. Pilette, Vice Chairman; State Fire Marshal Peter Ostroskey; Deputy Chief Jack Dempsey; and Alexander MacLeod. Steven P. Rourke, Esq. 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 Douglas Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Appellant's Submission of Documents in Support of Appeal
- 3A. Authorization of Representation
- 3B. Order of Notice of the Douglas Fire Department (11/30/2017)
- 3C. Board of Directors Meeting Minutes (12/20/2017)
- 3D. Estimate for Smoke Detector Installation from Eagle Star Security
- 3E. Property Record Card from the Douglas Assessors Office
- 3F. Renewal Certificate of Inspection (issued 11/28/2017)
- 3G. Two (2) Photographs of the Fire Suppression System
- 3H. Four (4) Photographs of Window and Door Locations within building
- 3I. Certificate of Flame Retardant Application for Curtains and Valance
- 3J. Entertainment License
- 3K. Listing of Facility Use in 2016
- 3L. Listing of Facility Use in 2017
- 3M. Independent Accountant's Review Report from Joseph W. Piniarski, CPA
- 3N. Proposal for Installation of New Fire Service line from Quarry Hill Excavating
- 3O. License for Alcoholic Beverages
4. Notice of Hearing to Appellant (1/11/2018)
5. Notice of Hearing to Douglas Fire Department (1/11/2018)
6. Copies of two Memoranda that accompany Hearing Notices
7. Photocopy of re-sent Hearing Notice and Envelope to Appellant (1/24/2018)
8. Sokol Hall Rental Agreement
9. Highlight/Copy of News Article
10. Submission from Douglas Fire Department (items A-H)
- 10A. Letter from Administrative Assistant of Board of Selectmen, Suzanne Kane, outlining club issues and history (2/5/2018)
- 10B. Memo from Administrative Assistant of Board of Selectmen, Suzanne Kane, to Police and Fire Chiefs on the Sokol Club Entertainment License (dated 2/19/2010)
- 10C. Memorandum from Chief Gonynor of the Douglas Fire Department regarding the Sokol Club Entertainment License (dated 2/23/2010)
- 10D. Memorandum to Douglas Board of Selectmen from Adelle Reynolds, Building Commissioner regarding the Sokol Club Entertainment License (dated 3/2/2010)
- 10E. Request from Randy Manyak, Manager of the Sokol Club asking to withdraw application for Entertainment License (3/8/2010)
- 10F. Correspondence from Chief Gonynor of the Douglas Fire Department to Randy Manyak, Manager of the Sokol Club regarding Entertainment License and Use of the Club (6/7/2010)

- 10G. Memo from Administrative Assistant of Board of Selectmen, Suzanne Kane, to Board of Selectmen regarding timeline addendum for Entertainment License (2/5/2013)
- 10H. E-mail from Town Counsel Bowen to Administrative Assistant of Board of Selectmen, Suzanne Kane regarding Entertainment License with history (2/4/2013)
- 11. Hand drawn layout from Building Official's Files – Town of Douglas

E) Subsidiary Findings of Fact

- 1) By written notice dated November 20, 2017, the Douglas Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of M.G.L c. 148, s. 26G½, 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 405 Northeast Main Street, Douglas, Massachusetts. On January 5, 2018, the Appellant filed an appeal of the departments' determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 14, 2018, at the Department of Fire Services, Stow, Massachusetts.
- 2) The building is owned and operated by the Slovak Catholic Sokol Gymnastics Club, Inc., a non-profit organization. The club is open to members, guests and the general public.
- 3) The subject building, is a single story, wooden structure classified as an A-2 Assembly use group classification. It consists of a bar area measuring approximately 26' x 34' with an occupancy for 54 persons and a function hall measuring approximately 48' x 35' with an occupancy for 112 persons. Between the bar area is a hallway with a stove that measures approximately 26' x 14'. Beneath the bar portion of the building is a basement that is used for storage.
- 4) The Club possesses a liquor license issued by the Town of Douglas that allows the Appellant to sell "All Kinds of Alcoholic Beverages... To be Drunk on the Premises" and indicates that the facility is allowed to serve liquor Monday through Saturday, 8:00AM to 1:00AM and Sundays from 10:00AM to 1:00AM. The facility also has an entertainment license allowing a juke box, television and amplifiers with the condition that the establishment events are limited to 6 events per year. The license expires on 12-31-18 and contains a condition that: "Management shall notify the selectman's office at least (7) seven days prior to the event. Police and Fire detail required at the discretion of the Chiefs. All music shall stop by 11:00PM."
- 5) The Appellant provided documentation that the facility hosted 41 events in 2016 and 40 in 2017 that involve a wide variety of events. Such events include: birthday parties, reunions, fundraisers, graduation parties, St. Patrick's Day, Halloween party, baby showers, and funeral collations. The Appellant indicated that the hours of operation are strictly enforced and that music at such events is usually by radio or DJ.
- 6) According to testimony, the bar not only serves those who occupy the bar area, but also serves those who use and occupy the function hall. There is no separate bar that serves those attending functions in the function hall.

- 7) The Appellant's representatives indicated that it is their position that the bar area need not be sprinklered as the capacity is less than 100 persons and that the function hall, although used for social function events, should not be considered a dancehall or discothèque and therefore subject to the s. 26G½ sprinkler requirements. They indicated that this board has, in previous decisions, determined that sprinklers are not required in facilities that operate functions that feature a meal as the primary attraction and are considered "organized private dining events". The Appellants referenced previous Board decisions such as Case #: 2005-23, 91 Manville Street, Leicester, MA ("Leicester decision") to support their position.
- 8) In support of the decision to Order the Appellant to install sprinklers, Chief Vinson testified that the Appellant's functions often do not meet the seven (7) characteristics necessary to be considered functions that are "organized private dining events" under the *Leicester* type facility. The Chief testified that the facility, which is an A-2 occupancy, has a significant number of events that feature music, dancing, service of alcoholic beverages and do not feature the meal as the primary attraction. He is also aware that many events are not organized in such manner that attendance is controlled by means of pre-arranged invitation. He is aware of events where entry was open to the general public by purchase of tickets at the door. He also indicated that there have been documented events involving overcrowding and excessive noise. He submitted copies of advertisements/postings on the web that describe the facility as a 'sports bar' or 'dive bar' and advertising events online that are open to the Public.
- 9) The Chief also indicated that although those portions of the facility described as a bar and function hall have separate established capacity limits, they lack sufficient operational separation, as occupants and activities flow from one portion of the building to another, allowing the activities of the bar to expand into other areas of the establishment, including the function hall. In short, the chief has concluded that the facility is essentially a bar that has a combined occupancy of 166 persons, thus clearly within the scope of the s. 26G½ sprinkler requirements.
- 10) The Appellant's representatives did not provide any evidence of significance to contradict the Chief's description of the facility and its use and occupancy and his conclusions that there is often a free flow of activities and occupants between the bar and function hall areas.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, 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, discothèque, 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 and required all systems to be installed within 3 years of the effective date of the act (by November 15, 2007).
- 2) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance

document relative to the provisions of this law found in c.148, s.26G½. This 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 acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discothèque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the Massachusetts Building Code, 780 CMR. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discothèques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is 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.

- 3) 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 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. 26G½. 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.
- 4) The current use group classification of this building as “A-2” is an important factor to consider in making a determination. Clearly this building is legally designed as and may be legally used for A-2 activities as described above and within the scope of M.G.L. c. 148, s. 26G½. The board finds that “A-2 like” entertainment activities frequently occur within and throughout this establishment that feature music, dancing, the service of alcoholic beverages and limited food service.
- 5) Based upon the evidence, it is clear that the occupants and activities flow freely between the bar area (capacity of 54 persons) and the function area (capacity 112 persons). In short, the entire facility is routinely operated as a bar with a combined occupancy of 166 persons. This is clearly within the scope of the s. 26G½ sprinkler requirement for “Every building or structure, or portions thereof, of a public assembly with a capacity of 100 persons or more, that is designed as or used for occupancy as abar... “.

6) Even if the facility maintained operational and physical separation between the bar area and the function hall, there was inadequate evidence to support a finding that only A-2 like activities occur in the function hall only in conjunction with “privately organized dining events” (see Leicester decision). Appellant’s representatives failed to provide any evidence of significance that would allow this Board to determine that the events held in the function hall meet the seven (7) characteristics necessary to conclude that the facility hosts ‘privately organized dining events’. Based upon the evidence, attendance for each specific event is not necessarily limited by pre-arrangement between the facility operator and the private event organizers to (1) assure that the number of guests is limited by written invitation or limited ticket availability to assure that attendance is limited and tightly controlled or (2) that attendees each have a seat and that tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress.

G) Decision and Order

Based upon the facilities current use as described at the hearing and based upon the aforementioned reasoning, the Board **upholds** the Order of the Douglas Fire Department to require the Appellant to install adequate sprinkler protection throughout the subject building in accordance with the provisions of M.G.L. c.148, s.26G½ and further orders the installation in accordance with following timeline:

1. The submission of plans and specifications for the installation of sprinklers shall be submitted to the Douglas Fire Department by July 1, 2018;
2. The Appellant shall enter into a contract for sprinkler installation and provide proof of same to the Douglas Fire Department by September 1, 2018.
3. Appellant shall complete sprinkler installation by January 1, 2020.

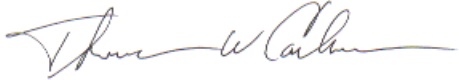
H) Vote of the Board

Chief Thomas Coulombe, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Peter Ostroskey, State Fire Marshal	In Favor
Chief Jack Dempsey	In Favor
Alexander MacLeod	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,



Chief Thomas Coulombe, Chairman

Dated: April 11, 2018

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

Randy Manyak, President
Slovak Catholic Sokol Gymnastic Club, Inc.
P.O. Box 302
Douglas, Massachusetts 01516

Chief Kent F. Vinson
Douglas Fire Department
P.O. Box 222
64 Main Street
Douglas, Massachusetts 01516