

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

Automatic Sprinkler Appeals Board

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CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 19-01
45 Chestnut Street
Holliston, 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, s. 26G, and Chapter 6, s. 201, relative to a determination of the Holliston Fire Department, requiring BHC Ventures, LLC, a real estate holding entity for Andrew and Adelaide Reseska, owners of Boston Honey Company, Inc. (hereinafter referred to as the Appellant), to install automatic sprinklers throughout a building that Appellant owns at 45 Chesnut Street, Holliston, Massachusetts.

B) Procedural History

By written notice dated December 10, 2018 and received by the Appellant on December 10, 2018, the Holliston 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 January 22, 2019, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 13, 2019, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Andy Reseska, Owner; and Glenn R. Davis, A.I.A., Architect for Boston Honey Co., Inc. Appearing on behalf of the Holliston Fire Department was Chief Michael Cassidy.

Present for the Board were: Maurice M. Pilette, Vice Chairman; Patricia Berry; Deputy Chief Jack Dempsey; Alexander MacLeod; and George Duhamel. Glenn M. Rooney, 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 Holliston 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 by Appellant
2. Statement in Support of Appeal
3. Order of Notice from the Holliston Fire Department (12/10/2018)
4. Plan & Perspective View – Boston Honey Company Facility Study (4/9/2018)
- 4A. First Level Plan (A.1)
- 4B. Front (East) Elevation (A.3)
- 4C. First Reflected Ceiling Plan (RC.1)
- 4D. Mezzanine Reflected Ceiling Plan (RC.2)
5. Copy of M.G.L. c. 148, s. 26G (agricultural references highlighted)
6. Copy of M.G.L. c. 128, s. 1A
7. Notice of Hearing to Appellant
8. Notice of Hearing to Holliston Fire Department
9. Copies of two Memoranda that accompany Hearing Notices
10. Copy of M.G.L. c. 61A, s. 1 (Land and Agricultural Use Defined)
11. Correspondence from Mass. Department of Revenue on Horticultural Uses of Land (6/23/2009)
12. Code Evaluation Report (5/16/2018)
13. Plan & Perspective View

E) Subsidiary Findings of Fact

1) By written notice dated December 10, 2018 and received by the Appellant on December 10, 2018, the Holliston 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 January 22, 2019, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on February 13, 2019, at the Department of Fire Services, Stow, Massachusetts.

2) The Appellant testified that the appeal was originally filed based upon his belief that the square footage of the building did not trigger the provisions of M.G.L. c. 148 s. 26G. More specifically, Appellant testified that he initially believed that a mezzanine level located inside the building should not have counted towards the overall square footage of the space and that the building footprint was 7,398 s.f. However, as was accurately determined by the Holliston Fire Department, the total square footage of the building is 9,017 s.f. (including the mezzanine level of 1,619 s.f.).

3) During the appeal hearing and after a reading of the statute, the parties stipulated that the subject building is over 7,500 s.f. and is subject to the sprinkler requirements pursuant to M.G.L. c. 148 s. 26G. At that time, the Appellant requested that he be permitted to present arguments on the so-called agricultural exemption found in M.G.L. c. 128, s.1A, as referenced by c. 148 s. 26G.

4) The Appellant testified that he is a commercial honey producer and the subject building is being used for agricultural purposes, specifically the seasonal harvesting of honey from honey

combs and the production of honey and beeswax candles for market. The Appellant's operation does not include the processing or altering of honey. The Appellant indicated that he owns approximately 3,000 bee colonies in Massachusetts, Georgia, New York and California and stated that he has approximately 1,000 colonies located in Metrowest Massachusetts.

5) The subject building, according to testimony received, would be used for the extraction of honey from honey combs and that the honey produced at his Holliston location is bottled and sold at his market at the Boston Public Market in Boston, as well as to larger wholesale producers and in large drums to grocers. Additionally, the Appellant testified that the byproduct of extracting honey is wax cappings that are melted down to form beeswax candles. The Appellant anticipates selling his honey and candles in a small market space or farm-stand type area (incidental to the honey production area) already constructed at the Holliston location.

6) The Appellant described that the building was constructed using structurally insulated panels and uses radiant floor heating produced by a geothermal heating system. He stated that the space is purposely dark and devoid of windows and kept at warm temperatures so that employees can remove any remaining bees that are attached to the honey combs, cut the combs off, and then use a centrifuge to spin out bees wax and honey. In addition, he indicated that on the mezzanine level, there is a dark room that is used to cultivate queen bees.

7) The Appellant testified that the cost of installing sprinklers throughout the entire building would be approximately \$70,000 for a combination wet/dry system. Additionally, the Appellant offered that the cost of connecting to the town water supply would be approximately \$13,000.

8) Based upon all of the activities described, it is the Appellant's position that the proposed building is not subject to the provisions of s. 26G since said law creates a specific exemption from the sprinkler requirements for buildings used for agricultural purposes as defined in M.G.L. c. 128, s. 1A, which states in part that "agriculture shall include farming in all of this branches . . . harvesting of any agricultural, floricultural or horticultural commodities, the growing or harvesting of . . . bees . . . including preparations for market, delivery or storage or to market . . ."

9) Chief Cassidy of the Holliston Fire Department testified that he believes that M.G.L. c. 148, s. 26G applies and that the plans for the use of the space had changed since the initial application process. Furthermore, it is the Chief's believe that the market/retail sales on site, change the use of the facility and would impact the agricultural exemption.

10) Chief Cassidy testified that but for the incidental farm-stand type sales area, he is of the opinion that the provisions of s. 26G would not apply to the remainder of the subject building due to its use for the specific and narrow agricultural purposes as described by the Appellant.

11) Chief Cassidy testified that the Holliston Fire Department was not in favor of only sprinkling the farm-stand type sales area which is the only area of the subject building that is open to the public.

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 parties stipulated that the subject building is over 7,500 s.f. and is subject to the sprinkler requirements pursuant to M.G.L. c. 148 s. 26G.

3) The Board finds that the proposed subject building, as it is has been described at the hearing is not subject to the requirements of M.G.L. c. 148, s. 26G, since its current intended use brings it within the agricultural exemption found in the statute. Specifically, such exemption includes: “Buildings used for agricultural purposes as defined in section one A of chapter one hundred and twenty-eight.” Said section 1A states:

“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and **harvesting of any agricultural**, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the **keeping and raising of** poultry, swine, cattle and other domesticated animals used for food purposes, **bees**, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, **including preparations for market, delivery to storage or to market or to carriers for transportation to market.**
(bold emphasis added)

In the case at hand, the guiding statute, M.G.L. c. 28, s.1, as referenced above, clearly includes a reference to the types of agricultural activities that the Appellant is engaged in, thus providing further support for this Board’s determination to apply the exemption to the subject building and its intended use as proposed.

G) Decision and Order of the Automatic Sprinkler Appeals Board

After careful review of all the testimony and evidence presented, the Board hereby unanimously **reverses** the determination of the Holliston Fire Department to require sprinklers in the subject building in accordance with the requirements of M.G.L. c. 148, s. 26G.

However, this determination is conditioned upon the continued use of the building to those *specific and narrow* activities as represented by the Appellant at the hearing, in accordance with agricultural activities described in M.G.L. c. 128, section 1A.

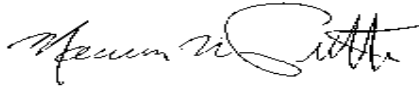
H) Vote of the Board

Maurice M. Pilette, Vice Chairman	In Favor
Patricia Berry	In Favor
Deputy Chief, Jack Dempsey	In Favor
Alexander MacLeod	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 section 14 of chapter 30A of the General Laws.

SO ORDERED,



Maurice M. Pilette, Vice Chairman

Dated: February 22, 2019

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

Andrew V. Reseska
148 Adams Street
Holliston, MA 01746

Chief Michael R. Cassidy
Holliston Fire Department
59 Central Street
Holliston, MA 01746-2103