

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

THOMAS A. TURCO, III
SECRETARY

CHIEF THOMAS COULOMBE
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 19-02
80 Worcester Street
Grafton, 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 Grafton Fire Department, requiring the owner, Edward Defeudis, Trustee, of the Cranberry Bog Nominee Trust (hereinafter referred to as the Appellant), to install automatic sprinklers throughout a building that Appellant owns at 80 Worcester Street, Grafton, Massachusetts.

B) Procedural History

By written notice dated December 10, 2018, and received on December 17, 2018, the Grafton Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building located at 80 Worcester Street, Grafton, Massachusetts. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On January 28, 2019, the Appellant's representative, Joanne Tavano, 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: Joanne Tavano, Tenant and Edward Defeudis, property owner. Appearing on behalf of the Grafton Fire Department was Chief Michael Gauthier; Steven Charest; and Robert Berger, Inspector of Buildings, Town of Grafton.

Present for the Board were: Chief Thomas Coulombe, Chairman; Patricia Berry; Deputy Chief Jack Dempsey; Alexander MacLeod; and Steven Rourke, designee for the State Fire Marshal, Peter J. Ostroskey. 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 Grafton 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 / Response to Fire Department Order (1/16/2019)
3. Order of Notice from the Grafton Fire Department (1/10/2019)
4. Notice of Hearing to Appellant (1/31/2019)
5. Notice of Hearing to Grafton Fire Department (1/31/2019)
6. Copies of two Memoranda that accompany Hearing Notices
7. Confirmation of ownership/representation of Appeal
8. Cost estimate of work being performed (10/1/2018)
9. E-mail from Town of Grafton to Architect (12/20/2018)
10. Floor Plan
11. Reflect Ceiling Plan
12. Detailed Building Plans (18 pages)
13. Submission of the Grafton fire Department

E) Subsidiary Findings of Fact

- 1) By written notice dated December 10, 2018, and received on December 17, 2018, the Grafton Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building located at 80 Worcester Street, Grafton, Massachusetts. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On January 28, 2019, the Appellant's representative, Joanne Tavano, 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) Through the Appellant's own exhibits and testimony presented at the hearing by both parties, it was established that the building was built in 1980 and consists of 11,640 s.f. of floor area.
- 3) The Appellant testified that the property is used as professional office space and the suites inside the building are occupied by a physical therapist, photographer, chiropractor, accountant, therapist (psychologist), and a hairdresser. The Appellant indicated that the space previously occupied by the chiropractor is now vacant and the Appellant recently entered into a long term lease with a "Family Orthodontics" for an orthodontic/dentistry practice.
- 4) On or about October 10, 2018, the Appellant's new tenants, Family Orthodontics, applied for a building permit to renovate a portion of the Appellant's building formerly used as a chiropractic office into an orthodontics office. The application for the building permit indicated that the renovation work would include: interior buildout of the orthodontics facility including all associated interior non-load bearing partitions, floor, wall and ceiling finishes, lighting, emergency exits, mechanical distribution, electrical devices, and plumbing fixtures with pipes. The estimated cost listed on the permit application by the Appellant (or Appellant's representative) was \$252,000 and it was represented that the renovations would

only impact approximately 1,727 s.f. of floor area (or 14.83% of the subject building's total s.f.).

- 5) Realizing that the estimated construction costs of \$252,000 on Appellant's building permit application would trigger the provisions of M.G.L. c. 148, s. 26G, at the hearing the Appellant presented a revised estimate from Pinnacle Piping for construction costs of \$206,000 in an effort to reduce the costs and indicated that \$46,000 was reserved as unspecified contingent costs. The Appellant presented no additional evidence or testimony to establish that the true cost of construction was not in fact \$252,000 and could not articulate the reasoning for \$46,000 in unspecified contingent costs.
- 6) In support of the Grafton Fire Department's determination to issue its Order of Notice, Assistant Chief, Steven Charest, testified that the department issued the Order to install a sprinkler system throughout the entire building, since the planned renovation of the space by Family Orthodontics, would be considered "major" alterations or modifications because of the gutting of the space and rebuilding of interior walls, ceiling, and installation of all new fixtures. In addition, the total cost of the work, \$252,000 is equal to or greater than 33% of the assessed value of the building, which is \$749,100, (\$252,000 equals 33.6%).
- 7) In further support of the Grafton Fire Department's position, Robert Berger, the Grafton Building Inspector, testified that this work would be the second renovation done within a three year period. Mr. Berger testified that between 2016 and 2018, approximately \$33,000 of other work was completed on the building. The Appellant presented no evidence to dispute this figure and in fact agreed with the Grafton Fire Department regarding the amount of and cost of work done to the subject building within the past three years.
- 8) The total cost of renovations within just the past three years to the subject building and the renovations by the Appellant that are the basis of this appeal totals approximately \$285,000 or 38% of the assessed value of the building (\$749,100).
- 9) The Appellant building owner testified that he was unaware that the tenant's recent application for a building permit would trigger the requirement to install a sprinkler system pursuant to M.G.L. c. 148, s. 26G. The Appellant indicated that had he exercised due diligence and educated himself or sought guidance on the provisions of Chapter 148 and more specifically, s. 26G, he indicated that he would not have agreed to have the work completed because he cannot afford the expense of installing a sprinkler system throughout the building. When asked about the estimated costs to install the system, the Appellant indicated that the costs would be "a hundred [thousand] or more" and stated that the costs alone to put a water line into the building would be \$30-50,000. However, the Appellant did not provide any detailed explanation for such high numbers and did not present any written estimates on this point.
- 10) According to the Grafton Property Record Card, the current assessed value of the building, other, and land combined is \$961,600.
- 11) Upon the Board's inquiry, the Appellant provided no suggested timeline or extension of time to complete the installation of a sprinkler system in the event the Board upheld the determination of the Grafton Fire Department.

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 11,640 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 the nature of the work (interior buildout of orthodontics facility including all associated interior non-load bearing partitions, floor, wall and ceiling finishes, lighting, emergency exits, mechanical distribution, electrical devices, and plumbing fixtures with pipes) and the scope of the work in this instance and in

the past three years, approximately \$285,000 or 38% of the assessed value of the building (\$749,100), constitute major alterations.

- 5) Furthermore, the Board finds that the Appellant's testimony regarding the nature and extent of the proposed demolition and construction and the associated costs, both the proposed costs and an unsubstantiated reference to "contingent" funds of \$46,000, is unsupported by the evidence and self-serving at best. Future work to reconstruct walls, ceilings, ceiling finishes, lighting, emergency exits, mechanical distribution, electrical devices and plumbing fixtures with piping will be substantial and extensive. In conclusion, the work is major and substantial and is clearly the type of work that the Legislature envisioned would trigger enhanced sprinkler installation.
- 6) It is understandable that the Appellant's unfamiliarity with the provisions of M.G.L. c. 148, s. 26G have caused Appellant an unexpected financial burden and frustration. However, such circumstances, solely based upon Appellant's lack of research or misinformation, should not result in a determination by this Board to overturn the fire department and waive the provisions of this law, which clearly mandates the installation of an adequate system of sprinklers in buildings that exceed 7,500 s.f. of floor area which is undergoing major alterations. Such a waiver by this Board under these circumstances and without legal justification, would frustrate the clear legislative intent of this important life safety provision.
- 7) The Appellant offered no factual or legal basis that would support a total waiver of the mandatory sprinkler provisions based on lack of research or misinformation or other similar circumstances presented in this case.

G) Decision and Order 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 Grafton Fire Department to require the installation of an adequate system sprinkler protection throughout the building located at 80 Worcester Street, Grafton, Massachusetts in accordance with the requirements of M.G.L. c. 148, s. 26G. To that end, the Board directs the installation of sprinklers in accordance with the following schedule:

1. Plans for the installation of sprinklers throughout the entire building shall be submitted to the Head of the Grafton Fire Department within ninety (90) days of the date of this decision (June 11, 2019).
2. The renovated portion of the building shall be sprinklered during the remodel.
3. The remainder of the building shall be sprinklered upon a change of tenancy, but in no case to exceed 3 years (March 13, 2022) from the date of decision.

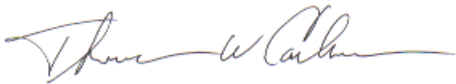
H) Vote of the Board

Chief Thomas Coulombe, Chairman	In Favor
Patricia Berry	In Favor
Deputy Chief, Jack Dempsey	In Favor
Alexander MacLeod	In Favor
Steven Rourke	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,



Chief Thomas Coulombe, Chairman

Dated: March 13, 2019

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

Joanne Tavano
5 Mount Royal
Marlborough, Massachusetts 01752

Edward M. Defeudis
63 Cherry Street
Northborough, Massachusetts 01532

Chief Michael Gauthier
Assistant Chief Steven L. Charest
Grafton Fire Department
26 Upton Street
Grafton, Massachusetts 01519