

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
FIRE SAFETY COMMISSION
AUTOMATIC SPRINKLER APPEALS BOARD**

**GARY O'BRIEN d/b/a KNIGHT MACHINE &
TOOL COMPANY, INC.**

Appellant

vs.

Docket No: 21-06

SOUTH HADLEY FIRE DISTRICT 1

Appellee

DECISION AND ORDER

INTRODUCTION

The Automatic Sprinkler Appeals Board (hereinafter "Board") considered the appeal in the above-captioned matter on Wednesday, May 11, 2022, at approximately 9:15 a.m., during an open meeting of the Board. The meeting was held virtually via WebEx pursuant to Chapter 22 of the Acts of 2022 and Governor Charlie Baker's Executive Order - COVID-19 Order No. 1.

There was a quorum of the Board and the following members were present and participated: Patricia Berry, Chair; Maurice M. Pilette, Vice Chair; Deputy Chief Joseph Shea (designee of the Boston Fire Commissioner); Gary Rogers, Chief Michael Spanknebel; and Alexander MacLeod.

Attorneys Glenn M. Rooney and John H. Dean were present and jointly served as legal counsel for the Board.

Jonathan P. Labonte, Esq. and Gary O'Brien, President of Knight Machine & Tool Co., Inc., appeared on behalf of Knight Machine & Tool Co., Inc. (hereinafter the "Appellant").

Chief Robert Authier and Captain Jason Houle (hereinafter “Capt. Houle”) appeared on behalf of the South Hadley Fire District 1 (hereinafter “Fire District”).

THE ORDER OF THE FIRE DEPARTMENT

By written notice dated October 8, 2021, and received by the Appellant on or about October 9, 2021, South Hadley Fire District 1 issued an Order, pursuant to the provisions of Massachusetts General Law (“M.G.L.”) c. 148, s. 26G, (hereinafter “26G”) to the Appellant, requiring the installation of automatic sprinklers throughout the building located at 6 Industrial Drive, South Hadley, Massachusetts. In short, the Fire District’s Order stated that a “change of use” triggered compliance with 26G.¹ The Appellant filed a timely appeal.²

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to hear the appeal and conduct an adjudicatory hearing pursuant to M.G.L. c. 6, s. 201 and M.G.L. c. 148, s.26G, and in accordance with M.G.L. c. 30A. The Board is an agency with expertise and experience in the technical aspects of fire safety. *Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd.*, 66 Mass. App. Ct. 701, 708, (2006). Pursuant to s. 201, the Board shall issue a decision or order reversing, affirming or modifying in whole or in part such interpretation, order or requirement of the Fire Department.

¹ The Order in full read:

An inspection of the building located at 6 Industrial Drive was conducted today. Building Commissioner David Gardner was present during the inspection. The building was recently purchased by yourself. The building was used prior as a warehouse (S use group) and is now being used as a Machine Shop (F2 use group) according to the building commissioner. The change of use triggers compliance with M.G.L. 148 Section 26G, installation of Automatic Fire Sprinklers.

² The Appellant filed its appeal on November 22, 2021. The matter was scheduled for a hearing on January 12, 2022. At the request of the Parties, the matter was continued, first until January 12, 2022, and then again to February 9, 2022. It was the position of the Parties that a non-administrative resolution was possible. Ultimately, though, the Parties reached an impasse and the matter came before the Board on May 11, 2022.

SUMMARY OF THE ARGUMENTS

A. Appellant's Position³

Appellant, through Counsel, began by stating 26G did not apply because a change of use is not a triggering element of the statute. Exhibit 3 was offered to show that the Fire District had based its Order on the determination by the Building Commissioner that the building's use was changing from warehouse to manufacturing, and that the Fire District considered the difference to be a change of use that triggered 26G. Counsel reiterated that change of use does not trigger 26G.

In citing to *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham*, 27 Mass. App. Ct. 276 (1989), Counsel argued that the Fire District's determination that a modification was a change of use was erroneous. In accordance with *McLaurin v. City of Holyoke*, 475 Mass. 231 (2016), Counsel noted that the Court there referenced the American Heritage Dictionary, and found that the terms modifications and alterations were interchangeable for purposes of the statute, but the statute did not apply here. Furthermore, because the statute does not apply, this issue belongs in front of the South Hadley Planning Board.

Appellant moved onto its second argument, that the nature and scope of the modifications were not major as discussed in *Beth Shalom* and the Board's May 2020 Advisory Document. Phrased as its "B1" argument, Appellant argued that the nature of the work included the removal and replacement of carpet, the construction of one nonstructural wall to segregate the electrical

³In presenting its case to the Board, the Appellant raised a number of issues. Although not clearly delineated and difficult to follow at times, it appeared that the Appellant's attack on the Fire District's Order was three fold. First, the Order was invalid because a change of use does not trigger 26G. Second, the Building Commissioner's determination that the building should be reclassified was incorrect. Third, no additions or major alterations were made to the building.

panel, painting, and the replacement of a drop ceiling. The Appellant referred to the building permit (Exhibit 16GG) as evidence of the work performed.⁴ Admittedly, Appellant performed additional work to the electrical system, however, that work was not part of the Fire District's October 2021 Order.

The Appellant also noted that the Fire District conducted an inspection of the building on the eve of the hearing, and for the first time alleged that major alterations had taken place.⁵ Because the Fire District was asserting new information so close in time to the hearing, Appellant was unable to fully argue against the Fire District's position. However, Appellant did testify that the work did not constitute major alterations and was mostly cosmetic in nature. In addition, since the work pertained to only about 1,900 square feet of the building, less than 33% of the 18,400 total gross square footage of the building was affected, as required by the Board's guidance. Exhibits 16P and 16D were offered in support of the size of the building.

The Appellant then moved on to its "B2" argument, relating to scope of the work performed. The Appellant offered Exhibit 16C and testified that the building had an assessed value of \$627,000.00. Mr. O'Brien testified that he was spending between \$125,000.00 and \$135,000.00 to complete the project. Of this figure, \$80,000.00 to \$85,000.00 was spent on electrical improvements. Mr. O'Brien also testified that not all of the money applied to "alterations" because some of costs were expenditures for what he considered maintenance and upkeep. He also testified that the work was complete and that no future projects were planned. On follow up questioning by the Board, Mr. O'Brien testified that the total square footage of the alterations affected approximately 2,000 square feet.

⁴ The Board notes that the exhibit shows that two (2) electrical permits and one plumbing permit were pulled in 2019 and 2020 but does not provide any information as to specific nature of the work performed.

⁵ Neither party presented any documentation regarding this inspection.

B. Fire District's Position

Capt. Houle spoke on behalf of the Fire District and testified that Appellant first contacted the Fire District in May of 2021 to discuss a potential purchase of the building, which had previously been used as a warehouse with an office area. After Appellant described his plans to the Fire District and the Building Commissioner, Capt. Houle testified that he advised the Appellant that a change in use may result in the building being reclassified from F2 to S2. If so, the change of use may require sprinklers be installed. The Fire District's next involvement with Appellant was in October 2021, when the Fire District observed work being performed in the building.

The Board intervened and asked Capt. Houle for evidence of what triggering event for 26G was present here.⁶ Capt. Houle testified that the change of use for the building code was, in fact, a triggering event for 26G. When asked for clarification, Capt. Houle testified that the modifications to the building led to the change of use. When the Board sought further clarification, Capt. Houle asked Chief Authier to provide the additional information.

Chief Authier reiterated the Fire District's position that modifications resulted in a change of use and that a change of use was a triggering factor for 26G. The Board advised Chief Authier that the building code change of use was not a trigger for 26G and again asked for specific evidence of how 26G was triggered here. Chief Authier testified that he believed change of use to a higher hazard level required sprinklers. When advised by the Board that the Building Code, and not 26G, may require sprinklers under this circumstance, and that the Fire District still

⁶ The Board, recognizing that the issue of major alterations was not before it, sought to limit the Fire Department's response to the four corners of the Order, which was issued on the assertion that 26G was triggered by a change of use.

had not shown a triggering event, Chief Authier ultimately conceded that the Fire District's Order may have been wrongly issued.

Chief Authier was given an opportunity to present evidence as to nature and scope, but testified that the nature and the scope of the work was not fully known to them at this time, and he was therefore unable to make a complete determination.

DISCUSSION AND FINDINGS OF FACT

The Appellant's first argument requires the Board to examine the language of the statute to determine whether the Fire District's undisputed use of the phrase "change of use" in its Order as a trigger for 26G was correct. In other words, to uphold the Order of the Fire District, the Board must find that "change of use" is a triggering event for 26G.⁷

When examining the language of a statute, the Board adheres to the "fundamental principle of statutory interpretation that "a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Crossing Over, Inc. v. City of Fitchburg*, 98 Mass. App. Ct 822, 828 (2020).

In pertinent part, 26G states that:

"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. ***"

⁷ Due to the uncontroverted testimony that the building exceeds the 7,500 square foot minimum threshold, the Board's discussion will be limited to the phrase in question.

Based on a plain reading of the statute, the phrase “change of use” does not appear in 26G. In addition, when the statutory language is clear and unambiguous, it must be given its ordinary meaning.” *Id.* We find that “change of use⁸”, as defined by the 2021 IEBC, means, “a change in the use of a building or a portion of a building, within the same group classification, for which there is a change in application of the code requirements.” We also note that “major alteration”, as defined by the Court in *Beth Shalom*, means, “any work, not repairs, which is “major” in scope or expenditure, and which results in changes affecting a substantial portion of the building.”

Since the two definitions are factually different, we find that “change of use” is not interchangeable with “major alteration” for the purposes of triggering 26G.⁹ Had the Legislature intended to extend the reach of 26G to buildings or structures that underwent a “change of use” pursuant to the building code, the Legislature would have so required.

Because the Board’s finding is dispositive of the Appellant’s appeal, the Board need not address the Appellant’s remaining arguments. However, this Decision and Order applies only to the incorrectness of the Fire District’s October 2021 Order and does not preclude the Fire

⁸ The Board notes that based on this definition for change of use, the change in classification should have been characterized as a change of occupancy, which according to the 2021 edition of the IEBC means, “any of the following shall be considered as a change of occupancy where the current International Building Code requires a greater degree of safety, accessibility, structural strength, fire protection, means of egress, ventilation or sanitation than is existing in the current building or structure:

1. *Any change in the occupancy classification of a building or structure.* (emphasis added)
2. Any change in the purpose of, or a change in the level of activity within, a building or structure.
3. A change of use.

However, for purposes of the Board’s consideration, the error is a distinction without a difference.

⁹The Board notes that although a major alteration may result in a change of use and a change of use may lead to a major alteration, the determination of whether 26G applies will still depend on the totality of the circumstances for that specific set of facts.

District from issuing any future Orders if warranted.


CONCLUSIONS OF LAW

The Board concludes, as a matter of law, that a “change in use” under the building code does not trigger the requirements to install an automatic sprinkler system under M.G.L c. 148, s. 26G.

DECISION AND ORDER

By a 6-0 roll call vote, the October 8, 2021 Order of the South Hadley Fire District 1, requiring Knight Machine Co. to install an automatic sprinkler system at 6 Industrial Drive, South Hadley, Massachusetts pursuant to M.G.L. c. 148, s. 26G, is hereby **REVERSED**.

SO ORDERED,



Patricia Berry, Chair

Dated: May 23, 2022

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RIGHT OF APPEAL

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.

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

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