

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

COLVEST/LONGMEADOW, LLC
Appellant

vs.

Docket No: 22-01

LONGMEADOW FIRE DEPARTMENT
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 10:45 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; Alexander MacLeod; and Kristin Kelly.

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

Michael Kennefick, Esq.; Matthew D Wittmer, Principal of Phase Zero Design; Peter LaPointe, Vice President of Real Estate and Construction / Project Manager for Colvest; Bill Maxwell, Director of Planning, Design and Technology for Colvest; and Frank Colaccino, Principal, Colvest appeared on behalf of Colvest/Longmeadow, LLC (hereinafter the “Appellant”)

Chief John Dearborn and Lieutenant Carl Viera (hereinafter “Lt. Viera”) appeared on behalf of the Longmeadow Fire Department (hereinafter “Fire Department”)

THE ORDER OF THE FIRE DEPARTMENT

By written notice dated February 1, 2022, and received by the Appellant on or about February 3, 2022, the Longmeadow Fire Department 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 471-475 Longmeadow Street / 8-10 Bliss Road, Longmeadow, Massachusetts. The Appellant filed a timely appeal.

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.

SUMMARY OF THE ARGUMENTS

A. Appellant’s Position

The Appellant presented a two (2) pronged argument. First, the Order should be reversed because 471-475 Longmeadow Street and 8-10 Bliss Road (hereinafter the “subject addresses”) are two buildings, and not one as determined by the Fire Department. Because each individual building is less than 7,500 gross square feet, 26G does not apply. Second, even if the subject addresses are one building, the renovations made by Appellant were not major alterations as contemplated by 26G, prior decisions and guidance of the Board, and/or applicable case law.

In support of its first argument, the Appellant presented testimony that established the timeline of construction and ownership of the subject addresses since approximately 1916. The subject addresses were constructed at different times and did not have commonality of ownership until approximately 1986. It was also testified to that, although the subject addresses shared a common wall, which was originally constructed as an exterior wall to 471-475 Longmeadow Street, there were no penetrations through the wall, no common attic or basement, and all utilities were separate.

The Appellant also provided testimony that the subject addresses had separate deeds and were not located on the same lot. Documentary evidence supporting these contentions was submitted as part of the record. Finally, the Appellant presented evidence that 471-475 Longmeadow Street is 7,279 square feet in size and that 8-10 Bliss Road is 6,725 square feet in size.

Regarding Appellant's second argument, that even if the subject addresses were one building, 26G is not triggered because a major alteration had not taken place. Guided by the Board's prior decisions and guidance, as well as the Court's decision in *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham*, 27 Mass. App. Ct. 276 (1989), Appellant contended that the nature of the work was mostly superficial and was not the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact.¹

Appellant also testified that the cost of alterations at 473 and 475 Longmeadow Street totaled \$183,112.51. With an assessed value of \$654,200.00, the scope of the work equates to approximately 28% of the assessed value of the property, less than the 33% threshold established by the Board in construing what constitutes "major" alterations.

In short, as the Appellant noted in its memorandum, “the Fire Department cannot have it both ways – if the buildings are viewed as one, then [the Fire Department] fails to meet the 33% threshold, and if they are considered separate, none meet the 7,500 SF threshold.”

B. Fire Department’s Position

The Fire Department’s testimony was provided by Lt. Viera, who is the Department’s Fire Marshal. Lt. Viera testified that he first became involved with the subject addresses on or about October 2019, at the request of the building department to assist in an electrical issue. As part of the discussion pertaining to the placement of an electrical panel, the Building Official advised that, per the Building Code, the subject addresses were two buildings. Lt. Viera contacted Appellant and requested dimensions and square footages of the subject addresses, but testified that he did not receive them.

Relying on the information provided by the Building Official, Lt. Viera sent an email to Appellant on October 21, 2019 which stated, in part, “for the purposes of *** 26G***, I had calculated the percentage of work based upon the entire complex being one building², rather than two, which would not trigger the sprinkler requirement. *** At this time, no action is required and the fire department is not requiring the installation of an automatic sprinkler system.”

It appears that the issue lie dormant until December 2021, when Lt. Viera conducted an inspection of an ongoing project at 473 Longmeadow Street. In reviewing the permit application and associated records, Lt. Viera reversed course and concluded that the Building Code definition of separate buildings was inapplicable. Because 26G calculates the dimension of a building by measuring the outside walls, regardless of separation by firewalls, the Fire Department now considered the subject addresses to be one building with a total square footage that was greater

¹ Colvest received a permit from the Town of Longmeadow authorizing the following work at 475 Longmeadow Street: “Addition/Repairs/Alterations: remove remaining bank improvements, add demising wall; Flooring; Partitions; Bathroom & new store front – Windsor Construction Management Services.”

² 26G utilizes the word “building or structure” and not “buildings or structures.”

than 7,500 square feet.

Lt. Viera also estimated that the nature of the work, which included demolition, reconstruction, and HVAC work performed, or anticipated to be performed, impacted approximately 5,000 square feet of the approximately 14,000 square feet building and, as such, exceeded the 33% threshold as required in the Board's May 2020 guidance.³

Ultimately, the Fire Department believed that the 26G had been triggered for the subject addresses because "this structure [is considered] a single building over 7,500 square feet *** and substantial renovations [had occurred] to the building over a reasonably short period of time." The Fire Department then issued its Order.

Both Parties were questioned as to how they viewed commonality of ownership in the determining whether the subject properties were one building. Not surprisingly, both offered opposing views. However, when the Fire Department was asked how it would have handled the situation if both subject addresses were not owned by the Appellant, Lt. Viera testified that it would have been a complex issue that would have required the assistance of legal counsel.

In addition to the testimony offered by the parties, the Board incorporates into the record the Appellant's Statement in Support of its Appeal and associated submissions, the submissions of the Fire Department, and the administrative materials generated by Board staff.

DISCUSSION AND FINDINGS OF FACT

From the outset, we note that, in pertinent part, MGL c. 148 s. 26G states:

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. *** For purposes of this section, the gross square footage of a building or structure shall include the sum total of the combined floor areas for all floor levels, basements, sub-basements and additions, in the aggregate, measured from the outside walls, irrespective of the existence of interior fire resistive walls, floors and ceilings.

³ The Board notes that there was conflicting testimony by the Parties as to the nature and scope of the work.

Consistent with prior decisions of the Board, 26G applies (1) to newly constructed buildings or structures over 7,500 gross square feet, or (2) to existing buildings or structures which are more than 7,500 square feet in the aggregate and which an addition is built onto or a major alteration or modification occurs.

Here, the Appellant's first argument focuses solely on the 7,500 gross square foot threshold in 26G applicable to new and existing buildings. For purposes of this argument, the Board will defer its consideration of Appellant's second argument as to the nature and scope of any alterations. In issuing its Order, the Fire Department concluded that 471-475 Longmeadow Street and 8-10 Bliss Road were one building. If true, then the gross square footage would far exceed the 7,500 threshold, and the requirements of 26G may very well apply if major alterations or modifications occurred.

In the Fire Department's Statement in Support of its Order, it wrote that Lt. Viera was provided with an architectural report which provided information that the subject addresses were four (4) separate buildings, each under 7,500 square feet, and constructed independently. But because the report did not provide evidence to aid in that determination, Lt. Viera gave little weight to the information and chose instead to conclude that the subject addresses were one building, based on its "clear appearance as a single structure, as defined by the statute." *See Fire Department's Statement in Support*. p. 3.

The Board recognizes that some buildings subject to the provisions of 26G may have a variety of characteristics and configurations involving multiple buildings or portions of buildings constructed on different dates, within different lot, lines and possibly involving different owners. In such instances, the determination of whether a building or structure, or a complex or set of buildings or structures should be considered "one" building for the purposes of s. 26G sprinkler protection, is dependent upon many factors. *See Church of Testament of Jesus Christ vs. Westfield Fire Department*, ASAB Docket 2011-15.

The factors the Board considered included, but were not be limited to; plot and property boundary lines; building ownership and control; building configuration and the location and nature of exterior walls and fire walls; the characteristics, dimensions and combustible fire load at the point of “connection” of two or more buildings, structures or portions thereof; the operational use relationship between said buildings, structures or portions; the nature and extent of existing fire protection and detection systems; and the nature of smoke and fire behavior.

In applying those factors to *Church*, the Board was called upon to determine whether a church building, which was connected to a sanctuary building, were one building for purposes of 26G. Based on the evidence and testimony provided, the Board found that both buildings were owned by the Church, but conveyed separately, built on separate parcels at different times, with different addresses, separate deeds, and separate utilities. The Board also found that at some point in time, prior to ownership by the Church, “the two separate buildings were connected to each other by means of a significant wood framed structure which featured the overlap of interior space and rooflines.” As such, it was clear that there was an “operational” relationship between both structures, which resulted in the buildings being “inextricably connected physically.”

The Board found that the church and rectory buildings were one for purposes of 26G and upheld the Order of the Westfield Fire Department requiring the installation of an automatic sprinkler system.

In applying the *Church* factors to the present case, the Board makes the following findings of fact. First, the properties were constructed independently over a lengthy period of time and the chains of title show that there was no commonality of ownership from 1924 through 1986. Second, each property was individually deeded and has its own tax assessment.

Next, there is no common attic or basement space connecting the subject addresses, and each were built on separate foundations. Finally, although the subject addresses share a common wall that was originally built as the exterior wall for 471-475 Longmeadow Street, the wall is an

8-12 inch load bearing wall which is without penetrations and extends above the roofline of both addresses.

The facts of these two cases are similar and present a close call. However, the Board finds that *Church* is distinguishable from the case before us. Unlike the buildings in *Church*, where there was an overlap of interior spaces and rooflines, which led to an “operational” relationship between the buildings, here the existence of a common wall between 471-475 Longmeadow Street and 8-10 Bliss Road prevents any such relationship. The common wall acts as a complete barrier to any commonality of use, and as a result, each building maintains its mutually exclusive characteristic as separate buildings, each of which is less than 7,500 square feet in size.

We believe these findings to be consistent with the language of 26G, which limits its application to a “building or structure.” While the Board understands the rationale behind the Fire Department’s determination that the subject addresses were one building based on appearance, this is simply not enough to bring the subject addresses within the reach of 26G.

“A fundamental principle of statutory interpretation is 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) “The statutory language, when clear and unambiguous, must be given its ordinary meaning.” *Id.*

Based on a plain reading of the statute, 26G applies to “a building or structure.” Given that the language is clear and unambiguous, “building or structure” means “one” building or structure. Had the Legislature intended to extend the requirements of 26G to multiple buildings or structures, which were joined together and had the appearance of “one building or structure,” the Legislature would have used the words “buildings or structures”.

Therefore, for the purposes of 26G, 471-475 Longmeadow Street is one building with a total square footage of 7,279 square feet and 8-10 Bliss Road is a second and separate building with a total square footage of 6,725 square feet.

Because the Board finds that neither building meets the 7,500 threshold for 26G to apply, the finding is dispositive of the Appellant’s appeal, and the Board need not address the Appellant’s second argument as to major alterations.

CONCLUSIONS OF LAW

The Board concludes, as a matter of law, that M.G.L. c. 148 s. 26G is inapplicable to this situation because 471-475 Longmeadow Street and 8-10 Bliss Road are two separate buildings, neither of which total more than 7,500 square feet in the aggregate.

DECISION AND ORDER

By a 5-2 roll call vote (Pilette and Spanknebel opposing), the February 1, 2022 Order of the Longmeadow Fire Department, requiring Colvest/Longmeadow, LLC to install an automatic sprinkler system at 471-475 Longmeadow Street and 8-10 Bliss Road, pursuant to M.G.L. c. 148 s. 26G, is hereby **REVERSED**.

SO ORDERED,



Patricia Berry, Chair

Dated: May 17, 2022

RIGHT OF APPEAL

You are hereby advised 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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