



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

Automatic Sprinkler Appeals Board

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Docket # 2023-03
230 County Road
Holyoke, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, s. 26G½, and Chapter 6, s. 201, relative to a decision of the Holyoke Fire Department to require Pilsudski Park Trust for the benefit of the Polish National Alliance of America, Lodge 525, (hereinafter the "Appellant"), to install automatic sprinklers in an existing building located at 230 County Road, Holyoke, Massachusetts.

B) Procedural History

By written notice dated February 6, 2023, and received by the Appellant on February 26, 2023, the Holyoke Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G½, to the Appellant requiring automatic sprinklers to be fully installed in an existing building owned and/or operated by said Appellant located at 230 County Road, Holyoke, Massachusetts. On March 16, 2023, the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on May 10, 2023, via video conference.

Appearing at the hearing on behalf of the Appellant was: Patrick Markey, Esq; Joseph Kos, Treasurer, Lodge 525; and Lech Sadkowski, Trustee, Lodge 525. Appearing on behalf of the Holyoke Fire Department was Captain Luis Izquierdo and Lt. Ray Ortiz.

Present for the Board at the hearing was: Patricia Berry, Vice Chair; State Fire Marshal Peter J. Ostroskey; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; and Kristin Kelly. Glenn M. Rooney, Esquire, and Rachel E. Perlman, Esquire, jointly served as counsel to the Board.

C) Issue(s) Presented

Whether the Board should affirm, reverse or modify the determination of the Holyoke Fire Department requiring sprinklers in the Appellant's proposed building, in accordance with the provisions of M.G.L. c. 148, s. 26G½?

D) Evidence Received

1. Application for Appeal filed by Appellant (dated 3/16/2023)
2. Letter of representation from Joseph M. Kos (dated 3/15/2023)
3. Copy of Trustees Certificate – Pilsudski Park Trust (dated 12/29/2015)
4. Order of Notice from the Holyoke Fire Department (dated 2/6/2023)
5. Appellant’s Statement in Support of Appeal with accompanying exhibits (dated 3/16/2023)
 - A. Letter from Chief David LaFond, Holyoke Fire Department
 - B. Affidavit of Joseph M. Kos
 - C. Order of Notice of Holyoke Fire Department
 - D. Quote for work from Elliott Fire Sprinkler Systems, LLC
 - E. Polish National Alliance - Lodge 525 The First 100 Years and Charter
 - F. Photographs
 - G. Certificate of Occupancy
 - H. Plans
 - I. Storage Room Photograph
 - J. Carpeted Hall Photos
 - K. Hall with Stage photos
 - L. Inspection Report
 - M. Rental Contract
 - N. Event Calendars for 2021-2022
 - O. ASAB Decision 04-23 - Leicester Decision
 - P. Advisory from Automatic Sprinkler Appeals Boards Board “regarding certain provisions of Chapter 304, of the Acts and Resolves of 2004”
 - Q. ASAB Decision 2018-01 – Douglas Decision
 - R. ASAB Decision 2017-12 – Gardner Decision
6. Holyoke Fire Department’s Submission in Support of Order of Notice with accompanying Exhibits
 - A. Photograph of exterior of property for Pilsudski Park (Polish National Alliance, Lodge 525)
 - B. Photograph of sign Pilsudski Park (Polish National Alliance, Lodge 525) showing “Facility for Rent”
 - C. Certificate of Inspection from City of Holyoke (issued 12/22/2022)
 - D. Copy of Holyoke 2023 Entertainment License Application filed by Appellant (dated 10/11/2022)
 - E. On Premises License Renewal Application (Liquor License) (dated 11/16/2015)
 - F. City of Holyoke Entertainment License (dated 12/2/2015)
 - G. City of Holyoke, Common Victualer’s License (dated 12/2/2015)
 - H. City of Holyoke, Club License (12/2/2015)
 - I. City of Holyoke Entertainment License Application (dated 11/16/2015)
 - J. City of Holyoke, Common Victualer’s License Application (dated 11/16/2015)
 - K. ABCC Form 43 showing change of Manager for Pilsudski Park (dated 11/23/2010)
 - L. City of Holyoke Club License (dated 12/21/2022)
 - M. Photographs from website and Facebook showing various spaces within the facility and various events being held and advertised at the facility
 - N. City of Holyoke Property Record Card
 - O. Survey map of available water supply via 8 inch main (approx. 600 ft. from structure)
 - P. Video of event at Pilsudski Dance Hall (taken from Facebook)
[Pilsudski Dance hall, Nighclub, bar, similar en...](#)

E) Subsidiary Findings of Fact

- 1) By written notice dated February 6, 2023, and received by the Appellant on February 26, 2023, the Holyoke Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G½, to the Appellant requiring automatic sprinklers to be fully installed in an existing building owned and/or operated by said Appellant located at 230 County Road, Holyoke, Massachusetts.
- 2) The property at issue is the Polish National Alliance Lodge 525 and Pilsudski Hall. The national organization was founded in 1900, with local chapter being established in 1937. The property was purchased by the organization for Polish cultural activities.
- 3) Pilsudski Hall was described by the Appellant's counsel as a single level structure with a capacity of 340 persons. The overall square footage including the kitchen, bathrooms, bar, entryway, and hall is approximately 110' x 60', with an unheated, back storage area measuring 16' x 39', for a total square footage of approximately 7,724 s.f. The facility has two spaces available for event rental, including a carpeted area connected to a kitchen and bar, and a separate hall with wood floors and a stage at one end.
- 4) Counsel for the Appellant provided copies of event calendars showing that the facility is booked on the weekends (Friday through Sunday) for various events including birthday parties, christenings, weddings, Jack N' Jill parties, quinceañeras (Sweet 15) and their largest event of the year, the Miss Polonia contest. Appellant's counsel described the events held at the facility as being private dining events, and further stated that all rentals through the Lodge are done by contract, with defined starting and ending hours and specific number of attendees. Most events at the facility range in size from 20 to 50 people for smaller events and 60-125 for larger events, such as their annual fundraiser. Appellant's counsel stated that there is always a representative of the facility on site during an event.
- 5) Counsel indicated that the facility is fully equipped with fire safety protections including: pull stations at every door, heat detectors, smoke detectors, fire extinguishers in the kitchen, bar and at all exit doors; exit doors at the main area to the left and right of the stage, large double exit doors at the bar and illuminated exist signs at all exits.
- 6) Counsel indicated that in 2005, the Holyoke Fire Department had previously ordered the facility to install sprinklers. However, the Appellants were later informed by the Fire Chief that this establishment was exempt from the provisions of 26G ½ following a more thorough review of the facility and its events, in conjunction with the *Leicester case* (ASAB Case 2005-93, 91 Manville Road, Leicester, MA) issued by the Board.
- 7) Counsel stated that in the *Leicester case*, the Board identified seven (7) key characteristics that distinguished fraternal organizations and their events, from other facilities and events that were more typical of bars, nightclubs, dancehalls or discothèques. In 2005, and again in this specific instance, the activities of the Appellant cannot be described as bar, nightclub, dancehall or discothèque-like activities based upon the criteria laid out in the *Leicester* decision.

- 8) In support of the Order of Notice, Captain Izquierdo of the Holyoke Fire Department testified that the Order was issued following an annual review of the liquor license and premises. He conceded that while the facility holds private events, it does not mean that a private event is safer because of its nature.
- 9) Captain Izquierdo testified that the Appellant has not provided the Fire Department with a copy of its revised contract or with copies of any completed contracts so they could confirm that events at the facility had tightly controlled admission, no over-crowding, and meals as the primary attraction, as mentioned in the *Leicester* decision. He further stated that while the facility does rentals to outside groups, it has also held events for its own members, including New Year's Eve parties.
- 10) In response to the exemption given to the Appellant by the former Fire Chief in 2005, Captain Izquierdo stated his interpretation of the exemption required that anytime the facility was to be operated as a bar, nightclub, dancehall or discothèque, that the Appellant was required to get a special temporary permit from the Holyoke Fire and Building Departments. He argued that every event held at the facility should have required a special permit with a fire detail because events are constantly held and are not temporary in nature. He further stated that the Appellant did not act in good faith and routinely failed to obtain the required permit for these events.
- 11) In support of his argument, Captain Izquierdo provided the Board with a video showing an event with low lighting and testified that it included loud party music (no audio accompanied the video at the time of the hearing), large groups of people on a dance floor, and ill-defined seating aisles. He stated that he did not believe that meals were a primary attraction for events held at the facility and when the meal ends, the facility becomes a bar, nightclub, dancehall or discothèque with music and dancing.
- 12) Lastly, Captain Izquierdo testified that the facility is located on the outskirts of the City of Holyoke, set back on a long and winding road (approximately 600' from the main road) and response times to the property would be longer in the case of emergency. He stated that if sprinklers were to be required, municipal water is available in that area.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) 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).
- 3) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this new 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 noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are 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.

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 780 CMR, 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) Based upon the testimony provided and documentation submitted into the record, this building is used for many different types of events. However, most of the functions described appear to be organized private dining events that feature a meal as the main attraction. In most instances the guests who attend such organized dining events are present as the result of written invitation or limited ticket purchase. Such “organized” private dining events, by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. The tables and chairs are not positioned as to create ill-defined aisles. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. According to the testimony, the characteristics of such events are within the strict control of an on-site manager and are established by a written agreement.
- 5) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board concludes that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like”

characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:

1. The facility is used for events that feature a meal as the primary attraction.
 2. The facility is used for events that are organized for the purpose of a private function.
 3. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit. Each event has a definite starting and ending time.
 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
 5. There are no significantly low lighting levels, and
 6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
 7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract. Examples of organized private dining events may include organized banquets, private parties, fund raisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s. 26G½, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.
- 6) Accordingly, the Board finds that most of the social activities within the function hall that feature “A-2 like” activities, such as music and dancing, are considered “privately organized dining events” which feature a meal as the primary attraction. As such, the Board finds that said the facility, as currently used, meets the seven (7) characteristics as stated above and is not subject to the sprinkler requirements of s. 26G½, as long as the characteristics stated in section F, paragraph (3), items (a) through (g) are met for all events that feature music or entertainment.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board **reverses** the Order of the Holyoke Fire Department to require adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c. 148, s. 26G.

H) Vote of the Board

Patricia Berry, Vice Chair	In Favor
State Fire Marshal Peter J. Ostroskey	In Favor
Deputy Chief Patrick Ellis, designee	In Favor
Chief Michael Spanknebel	In Favor
Kristin Kelly	In Favor
George Duhamel	Abstained

I) 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.

SO ORDERED,



Patricia Berry, Vice Chair

Dated: June 8, 2023

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

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