



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

Automatic Sprinkler Appeals Board

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Docket # 2023-07
250 Whitney Avenue
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 Swansea Fire Department to require the Benevolent and Protective Order of Elks, Lodge # 902, (hereinafter the "Appellant"), to install automatic sprinklers in an existing building located at 250 Whitney Avenue, Holyoke, Massachusetts.

B) Procedural History

By written notice dated February 15, 2023, and received by the Appellant on February 15, 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 250 Whitney Avenue, Holyoke, Massachusetts. On March 28, 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 17, 2023, via video conference.

Appearing at the hearing on behalf of the Appellant was: Thomas Wilson, Esq.; Jack O'Connell, Trustee; Julian Swistak, Exalted Ruler; Anita Barsalou, Officer; and Ron Barsalou, Trustee. Appearing on behalf of the Holyoke Fire Department was Chief John Kadlewicz and Captain Luiz Izquierdo.

Present for the Board at the hearing was: Maurice Pilette, Chair; Patricia Berry, Vice Chair; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; Gary Rogers; Kristin Kelly; Sandy McLeod; and George Duhamel. Rachel E. Perlman, Esq. 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 Benevolent and Protective Order of Elks Lodge # 902 (dated 3/16/2023)
3. Order of Notice from the Holyoke Fire Department (dated 2/15/2023)
4. Appellant's Statement in Support of Appeal (dated 3/29/2023)
5. Building Plans - BPOE Lodge # 902 (Undated)
 - 5A. First Floor Plan
 - 5B. Building Sections
 - 5C. Wall Sections
 - 5D. Roof Plan – Roofing Details
6. Unofficial Property Record Card – Holyoke Lodge No. 902
7. Screen shot of Google Map that shows building is not in a congested neighborhood And is a fraternal organization (submitted by Counsel for the Appellant)
8. Holyoke Fire Department's Submission in Support of Order of Notice with accompanying Exhibits
 - 8A. Photographs of functions taking place and interior of facility (4 pages)
 - 8B. Advertisements for various functions being held at facility (5 pages)
 - 8C. Photographs posted by Holyoke Lodge of Elks on social media of functions being held (2 pages)
 - 8D. City of Holyoke – Certificate of Inspection for 1st Floor (dated 11/10/2022)
 - 8E. City of Holyoke – Certificate of Inspection for 2nd Floor Hall (dated 11/10/2022)
 - 8F. City of Holyoke – Certificate of Compliance showing capacity and use group
 - 8G. 2023 ABCC Retail License Renewal (dated 11/10/2022)
 - 8H. 2023 City of Holyoke, Club License (dated 12/1/2021)
 - 8I. 2023 City of Holyoke Entertainment License Application (dated 11/10/2022)
 - 8J. Property Record Card
 - 8K. Narrative Report for Fire Protection Sprinkler & Fire Alarm Systems At The Elks Club # 902 prepared by Fire Sprinklers HFP Corporation (dated 4/8/2006)
 - 8L. Hydrant Available Fire Flow (GPM) overview for Whitney Ave to property
 - 8M. Copies of past Licenses and Certificates of Inspection issued by City of Holyoke (47 pages)
 - 8N. Video from taken from Facebook page of Holyoke Lodge of Elks (posted 7/8/2022)

E) Subsidiary Findings of Fact

- 1) By written notice dated February 15, 2023, and received by the Appellant on February 15, 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 250 Whitney Avenue, Holyoke, Massachusetts.
- 2) The property at issue is Benevolent and Protective Order of Elks, Lodge # 902. The building is a two-story masonry and steel building structure, approximately 14,000 s.f. in size. The upper level is used as a banquet hall with a supporting kitchen, bathrooms and common areas. The lower level is the members meeting hall.
- 3) Counsel for the Appellant stated that the facility is a private organization for rent, with all events held on weekends between Friday and Sunday. The facility is not otherwise open during the week. The facility typically hosts events such as weddings, showers, Jack n Jill

parties, union meetings, parade committee meetings, and often donates hall time to local organizations.

- 4) Counsel for the Appellant stated that functions held at the facility must have meals as part of the rental contract and that food is the primary attraction. Furthermore, every event is held by contract, with defined start and end times, and confirmed headcount for food and seating planning purposes. They further indicated that the facility has a strict prohibition on all open flames including no smoking, no candles and no sterno warmers for food. Any food that needs to be either heated or cooked, must be done within the on-site kitchen.
- 5) Counsel for the Appellant stated that while there may be dancing or live or recorded music, that is not the primary attraction and that dancing activity is ancillary and usually at the end of the function, following the service of a meal.
- 6) 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. It is the Appellant's position that the activities held within the facility cannot be described as bar, nightclub, dancehall or discothèque-like, since the meal is the primary attraction and dancing/music is ancillary.
- 7) Members of the Elks in attendance testified that in 2006, the facility had sprinklers installed in the lower-level members lounge, the entry way foyer, and hallway to the function hall. The only space that is not currently sprinklered in the upstairs banquet hall.
- 8) When questioned about the cost to install sprinklers in the function hall, the Appellant stated they had received an initial estimate of \$48,000. However, they stated that due to national Elks rules, they could not agree to spend any monies over \$25,000 without permission from the Grand Lodge in Chicago. Once that permission is granted, they would then need to obtain financing locally to complete the work.
- 9) In support of the Order of Notice issued by Holyoke Fire Department, Chief John Kadlewicz testified that the facility, and events held there, require a sprinkler system under M.G.L. c. 148, s. 26 G½.
- 10) Holyoke Fire Prevention Captain Luis Izquierdo testified that the building is over 14,000 s.f. in total and over the years, the facility has had several different occupant loads. The occupant load for the hall had been 450 but it was later reduced to 240. The current Certificate of Inspection dated November 10, 2022 lists the occupant load as 165. The Holyoke Fire Department believes that the occupant load was reduced, in part, to avoid having to install sprinklers in the function hall. The occupant load of the "first floor bar area" is currently 75.
- 11) Captain Izquierdo confirmed that other areas of the facility, aside from the function hall, were sprinklered in 2006 but that the department does not have any information and unable to locate any documentation on a sprinkler exemption for the hall.
- 12) Captain Izquierdo stated that while the upstairs function hall is currently un-sprinklered, piping does exist within the hall (approximately 8-10 feet in) to extend the sprinklers into that space. He advised that by today's construction standards, the building would be required to have sprinklers installed throughout during initial construction.

- 13) Captain Izquierdo further testified that while the facility may be used for private dining events, such as spaghetti nights, as described by the Appellant, many functions often do not meet the seven (7) characteristics necessary to be considered functions that are “organized private dining events” under the criteria provided in the Board’s *Leicester* case. The facility, which is an A-2 occupancy, often hosts events that feature music, dancing and service of alcoholic beverages but in the department’s opinion, the meal is not the primary attraction. Rather, it is the musical entertainment or bingo that is the primary attraction, with a meal being secondary.
- 14) To bolster his argument, Captain Izquierdo submitted several event advertisements for events open to the general public, including an “Irish Night”, a “Cinco de Mayo Pocket Book Bingo” and a “UnionJack British Invasion Band” event held in “upstairs in the ballroom – no cover charge!” In particular, the Cinco de Mayo event stated “advanced tickets highly recommended”.
- 15) Captain Izquierdo stated that it is not uncommon for event tickets to be sold both at the door and ahead of the time and believes that the Appellant does not have control over the amount of people attending events at its facility, as they cannot predict how many attendees may come on the night of the event and purchase tickets at the door. Photographs and video were also submitted that depict low lighting levels/and or special effect lighting, with loud music and dancing.
- 16) Captain Izquierdo raised additional concerns regarding the lack of a physical (fire) or operational separation between events occurring in the function hall and the members bar area. Based upon his own personal experience at the facility, Captain Izquierdo stated that patrons can flow freely throughout the building and can access the lower-level members room to purchase a drink and then return to functions being held in the upstairs banquet hall.
- 17) Lastly, Chief Kadlewicz testified that as of the date of the hearing the Elks did not have a current Certificate of Inspection on file and no current liquor license but continues to book events and sell/serve alcohol on a daily basis. He stated that the absence of proper and current licenses is due in part to a faulty smoke alarm within the facility, which has yet to be corrected.

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.

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.
- 4) Accordingly, the Board finds that most of the social activities held 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

Maurice Pilette, Chair	Opposed
Patricia Berry, Vice Chair	In Favor
Deputy Chief Patrick Ellis, designee	In Favor
Chief Michael Spanknebel	In Favor
Kristin Kelly	In Favor
Gary Rogers	In Favor
Sandy McLeod	In Favor
George Duhamel	Opposed

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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