



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

KRISTIN M. KELLY
CHAIR

DANIEL GARY ROGERS
VICE CHAIR

MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR

TERRENCE M. REIDY
SECRETARY

Docket # 23-09
319 River Drive
Hadley, 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 Hadley Fire Department, requiring Five College Farms, LLC (hereinafter referred to as the Appellant), to install automatic sprinklers throughout two buildings that Appellant owns at 319 River Drive, Hadley, Massachusetts.

B) Procedural History

By written notice dated March 23, 2023 and received by the Appellant on March 23, 2023, the Hadley Fire Department issued a determination requiring automatic sprinklers to be installed throughout "multiple structures" on the subject property. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On May 4, 2023, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on July 12, 2023 via video conference.

Appearing on behalf of the Appellant were: Michael Pietras, PE, Principal Engineer, Engineering and Land Solutions, Inc. and Keith Rehbein, Manager, Five College Farms, LLC.

Appearing on behalf of the Hadley Fire Department was Deputy Chief Evan Briant and Hadley Building Commissioner, Thomas Quinlan, Jr.

Present for the Board were: Kristin M. Kelly, Chair; Daniel Gary Rogers, Vice Chair; Peter J. Ostroskey, State Fire Marshal; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Alexander McLeod; and George Duhamel. Rachel E. Perlman, 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 Hadley 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 filed by Appellant (dated 5/4/2023)
2. Statement in Support of Appeal Application from Engineering and Land Solutions, Inc. with accompanying Exhibits, 2A-2G (dated 5/2/2023)
- 2A. Corporate Documents
- 2B. Farming Certificates, Inspections, etc.
- 2C. Aerial Photos
- 2D. Survey and Plot Plans
- 2E. MGL's
- 2F. Fire Chief Michael Spanknebel Order & Tim Neyhart Permit
- 2G. Existing Conditions / Plans
3. Submission of the Hadley Fire Department in Support of Order of Notice with Exhibits, 3A-3I
- 3A. Building Permit (2008-5231)
- 3B. 8th Edition Building Code – Agricultural Definition
- 3C. Copies of Building Permit, Application, Design Professional in Responsible Charge, Initial Consultation Control Document (6 pages total)
- 3D. Building Permit Application filed by Mike Pietras, ELS Inc. dated 11/3/20 (2 pages)
- 3E. E-mail correspondence from Mike Pietras to Chief Spanknebel dated 12/20/20
- 3F. Building Permit Application filed online (dated 2/3/2021) and e-mail from Neil Paquette to Building Inspector dated 2/3/2021
- 3G. Correspondence from Engineering Land Solutions, Inc. to Hadley Building Commissioner regarding Building Code Review dated 4/27/2021
- 3H. E-mail correspondence and drawings from the Architectural Designer submitted to Chief Spanknebel and the Building Commissioner, dated 5/2/2021
- 3I. Communications between the Hadley Fire Department, Hadley Building Commissioner, Appellant's representative, and the State Fire Marshal's (various dates)
4. Correspondence from Tim Neyhart, retired Building Commissioner, Town of Hadley sent to Appellant's representatives (dated 7/11/2023)

E) Subsidiary Findings of Fact

- 1) By written notice dated March 23, 2023 and received by the Appellant on March 23, 2023, the Hadley Fire Department issued a determination requiring automatic sprinklers to be installed throughout "multiple structures" on the subject property. On May 4, 2023 the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board.
- 2) At the outset of the hearing and in response to the Board's inquiry regarding which buildings on the property were the subject of the Order of Notice, the Hadley Fire Department testified that the order applied to the office building and warehouse, which each had additions added to them (an entryway and an overhang).

- 3) The Appellant's property is Five College Farms, LLC which operates on approximately 40 acres (1,742,400 s.f.). The Appellant testified that the property is used as a working farm which produces cucumbers, tomatoes, winter squash and sells the same to grocery stores throughout the Northeast.
- 4) The Appellant testified that that Order to install sprinklers was triggered by additions to two buildings on the properties.
- 5) The first addition was a buildout of an entryway on the building described by the Appellant as the boiler building/office building, which houses offices for the farm, as well as a water treatment room, boiler room, and pesticide storage. The total square footage of this connected building is 7,025 s.f.
- 6) The Appellant argued that the size of this addition as listed on the Order of Notice (900 s.f.) is incorrect and that the correct square footage of this entryway was 315 s.f. The Hadley Fire Department later testified that they had made a mistake and agree that the correct size is 315 s.f. Based upon the corrected calculations, the Appellant argued that s. 26G does not apply, as the addition did not trigger the 7,500 s.f. requirement to install sprinklers throughout.
- 7) The second addition was an 8,800 s.f. overhang to an existing 22,000 s.f. warehouse and cold storage facility on the property. The farm's manager, Mr. Rehbein, testified that the overhang/lean-to is for storage of tractors used in farming operations. He also testified that the warehouse is used for the propagation of seedlings before planting in the fields and for the sorting of harvested vegetables (tomatoes) before being sent to market.
- 8) Mr. Rehbein testified that only employees of the farm can access all buildings on the property and that there are no direct sales to the public. He further indicated that any visitors to the property, including inspectors from the Massachusetts Department of Agriculture, the U.S. Department of Agriculture, or representatives of local grocery stores, would be accompanied by farm personnel at all times.
- 9) The Appellant testified that despite the additions to two of the structures on the site, Five College Farms, LLC is a clearly a farm and that all buildings are used for agricultural purposes. The Appellant believes that based upon the so-called 'agricultural exemption' found in M.G.L. c. 128, s.1A, as referenced in s. 26G, the farm should be exempted from the sprinkler requirement.
- 10) Based upon all of the activities described, it is the Appellant's position that buildings in question are not subject to the provisions of s. 26G since said law creates a specific exemption from the sprinkler requirements for buildings used for agricultural purposes as defined in M.G.L. c. 128, s. 1A, which states, in part, that "agriculture shall include farming in all of this branches . . . harvesting of any agricultural, floricultural or horticultural commodities . . . or **on a farm as incident to or in conjunction with** such farming operations including preparations for market, delivery or storage or to market . . ." (emphasis added).

- 11) In support of the Order of Notice issued by the Hadley Fire Department, Deputy Chief Briant testified that M.G.L. c. 148, s. 26G applies based upon the existing square footage of the buildings and the additions to each.
- 12) Deputy Chief Briant testified that the Hadley Fire Department was not initially aware of the additions to the buildings on the property and had only learned about the work in question after a Stop Work Order was issued by the Hadley Building Department. Furthermore, plans showing the additions to the building were submitted six (6) months after the work had been completed and the Hadley Fire Department had not been given an opportunity to review such plans or to conduct inspections on the additions to each building.
- 13) During testimony, Deputy Chief Briant stated that the Order to install sprinklers was issued for the “office building” because he does not believe it is being used for agricultural purposes. Rather, he stated that the building houses meeting/conference rooms, bathrooms, and a kitchen, in addition to a boiler room and pesticide storage, which is not being used for agricultural purposes and should not be exempted from the requirements of s. 26G.
- 14) In regard to the overhang area on the warehouse, Deputy Chief Briant stated that the 8,800 s.f. overhang added to the 22,000 s.f. warehouse, clearly triggers the requirements of s. 26G. However, both Deputy Chief Briant and Commissioner Thomas Quinlan from the Hadley Building Department testified that they do not believe this overhang area is being used for agricultural purposes.
- 15) Commissioner Quinlan testified that on visits to the farm, he has seen other vehicles including boats and campers being stored under the warehouse overhang but did not have any photographic evidence to submit in support of this claim.

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) Based upon testimony received and evidence submitted into the record, the Board finds that the addition to the boiler building/office building does not trigger the 7,500 s.f.

requirement as defined in the statute. The 8,800 s.f. addition to the warehouse structure would trigger that requirement.

- 3) However, the Board finds that the subject buildings, as they have been described, **are not subject** to the requirements of M.G.L. c. 148, s. 26G, since their current use brings them within the agricultural exemption found in the statute. Specifically, such exemption includes: “Buildings used for agricultural purposes as defined in section one A of chapter one hundred and twenty-eight.” Said section 1A states:

“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and **harvesting of any agricultural**, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm **as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.**
(bold emphasis added)

In the case at hand, the guiding statute, M.G.L. c. 28, s.1, as referenced above, clearly includes a reference to the types of agricultural activities that the Appellant is engaged in, thus providing further support for this Board’s determination to apply the exemption to the subject buildings and their intended use.

G) Decision and Order

After careful review of all the testimony and evidence presented, the Board hereby unanimously **reverses** the determination of the Hadley Fire Department to require sprinklers in the subject buildings in accordance with the requirements of M.G.L. c. 148, s. 26G.

H) Vote of the Board

Kristin M. Kelly, Chair	In Favor
Daniel Gary Rogers, Vice Chair	In Favor
Peter J. Ostroskey, State Fire Marshal	In Favor
Deputy Chief Patrick Ellis	In Favor
Alexander McLeod	In Favor
George Duhamel	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,



Kristin M. Kelly, Chair

Dated: July 20, 2023

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

Keith Rehbein
Five College Farms, LLC
740 High Street, Suite 2
Holyoke, MA 01040
belgiandraft2@yahoo.com

Michael Pietras, P.E., Principal Engineer
Engineering and Land Solutions, Inc.
165 Dowd Court
Ludlow, MA 01056-1744
mike@elsnow.com

Chief Michael Spanknebel
Hadley Fire Department
15 East Street
Hadley, MA 01035
Spanknebelm@hadleyma.org
BrianTE@hadleyma.org

Commissioner Thomas Quinlan
Office of Hadley Building Commissioner
100 Middle Street
Hadley, MA 01035
inspections@hadleyma.org