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The Commonwealth of Massachusetts
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Automatic Sprinkler Appeals Board

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Docket # 2005-14
1055 Auburn Street
Whitman, 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, section 26G½ and Chapter 6, section 201, relative to a determination of the Whitman Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Carousel Family Fun Center (hereinafter referred to as the "Appellant"). The building, which is the subject of the order, is located at 1055 Auburn Street, Whitman, Massachusetts.

B) Procedural History

By written notice dated March 14, 2005, the Whitman Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G½, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 1055 Auburn Street, Whitman, MA. The Appellant filed an appeal of said order on April 22, 2005. The Board, after an initial hearing and several continuances, held a hearing relative to this appeal on June 14, 2006, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Attorney Paul Cavanaugh, Rosemary Ford, Trustee, Triple J Realty (owner of building), and Charlene Conway, owner (Carousel Family Fun Center). The Whitman Fire Department was represented by Attorney Matthew Tobin and Chief Timothy P. Travers. Also in attendance, was Robert P. Curran, Building Commissioner, Town of Whitman, and David T. Gregory, Police Officer, Town of Whitman.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, P.E., Vice Chair, Alexander Macleod, Thomas Coulombe, Peter E. Gibbons, and John J. Mahan. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Whitman Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, § 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement to Appeal Application Form, Page Two
3. Certificate of Inspection (issued 1/6/2003)
4. Deed and Declaration of Trust Establishing Triple J Realty Trust
5. 2005 Tax Bill
6. Site plan of land for 1055 Auburn Street, Whitman
7. Order of Whitman Fire-Rescue Department
8. Stipulated Facts
9. Sprinkler Proposal of Yankee Sprinkler Company, Inc.
10. Brochure for Carousal Family Fun Center
11. 1st Notice of Hearing to Appellant
12. 1st Notice of Hearing to Whitman Fire Department
13. 2nd Notice of Hearing to Appellant
14. 2nd Notice of Hearing to Whitman Fire Department
15. 3rd Notice of Hearing to Appellant
16. 3rd Notice of Hearing to Whitman Fire Department
17. 4th Notice of Hearing to Appellant
18. 4th Notice of Hearing to Whitman Fire Department
19. Photographs (A-G)
20. Appellant's Additional Submissions
21. Request for Findings of Fact for Town of Whitman Fire-Rescue & Emergency Services and Proposed Disposition of Case
22. Exhibit List of Town of Whitman Fire-Rescue & Emergency Services
23. Amended Exhibit List of Town of Whitman Fire-Rescue & Emergency Services
24. Sprinkler Estimate – Sounder Systems, Inc.
25. Fire Department Inspection Report
26. Inspection Report – Building Comm.
27. Carousel Family Fun Center Advertisement

E) Subsidiary Findings of Fact

- 1) By Notice dated March 14, 2005, the Whitman Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 1055 Auburn Street, Whitman, Ma, in accordance with the provisions of M.G.L. c. 148, s.26G½. The Appellant filed an appeal of said order on April 22, 2005. After appropriate notice, the Board held a hearing relative to this appeal on October 12, 2005. The hearing was continued for 60 days per agreement of the parties. After multiple continuances, a subsequent hearing was held on June 14, 2006.

Said hearing was considered a hearing De Novo and the record of this proceeding consisted of evidence and testimony submitted at said hearing since several of the board members who had originally participated in the October 2005 hearing were either no longer on the Board or were otherwise not available for the June 14th hearing. Neither party objected to this hearing parameter. It was noted that the owner of the building as well as the current tenant were attending the hearing and that Attorney Cavanaugh was representing the interests of both parties.

- 2) According to the representatives for the Appellant, the building consists of approximately 20,000 sq. ft of floor area. The structure was built in 1982 under a special permit as a roller skating rink. The skating floor occupies approximately 13,000 sq. ft of the floor area. The building is constructed of steel with a wood floor, and no windows.
- 3) According to the 2003 Certificate of Inspection issued by the Whitman Building Department, the establishment has a legal capacity of 428 persons. The Certificate does not indicate the use group classification of this building. However, Building Commissioner Curran testified, and the Appellant agreed, that the facility should have an A-3 classification. The Commissioner stated however that, in his opinion, certain activities occur in this building which may be consistent with an A-2 classification. Both parties agreed that the current certificate, although not submitted into evidence, lists the same capacity as that listed on the 2003 Certificate of Inspection.
- 4) The establishment serves no liquor and is not licensed to serve liquor. An entertainment license has been issued which allows the building to be used for certain entertainment purposes. The license specifically allows “dancing”. Although the Appellant indicated that such language appears on all such licenses.
- 5) Appellant contends that the establishment is a roller skating rink and not a dance hall. Testimony indicates that this facility is used for a variety of different activities relating to the use of roller skates and activities incidental thereto. Examples of such events include: public roller skating sessions, roller skating instruction, artistic roller skating, dance lessons and private skating parties for both adults and children. An advertisement submitted into evidence indicates that the establishment is available for rental for private parties, community groups, family reunions, holiday parties, corporate gatherings and fundraising events. The advertisement further features the existence of a full sound system, disco lights and a video projector. The establishment encourages persons from all ages to attend the events at the facility and encourages the use of roller skates particularly by the children.
- 6) Dancing activities on roller skates occurs on a routine and regular basis in this establishment particularly in the form of line dances at the end of many skating sessions. Appellant testified that the purpose of the line dancing activity is to create an orderly flow of patrons off of the floor for egress purposes. But testimony was also provided by the Appellant indicating the routine activity of artistic skating and organized skate class lessons which include instruction in dances such as the Argentine Tango, Continental Waltz and the Glide Waltz performed to accompanying music. Additionally, events characterized as “dance skating” to organ music takes place on a weekly basis.

- 7) The Appellant testified that there is a snack bar area in the rink and that the seating within that area is very well defined, and that the chairs/benches and booth seating is very hard to move. The Appellant also indicated that the cooking area within the snack bar has recently been updated and that an internal suppression system was installed over the deep fryer.
- 8) According to the appellant, based upon the capacity listed on the certificate of inspection (428 persons) and the overall size of the skating floor, there is approximately 30.67 square feet per person, and approximately 40 sq. ft. per person based upon the 20,000 sq. ft of the entire facility. The Appellant indicates that the number of attendees on public skating nights varies from night to night.
- 9) Various photographs were submitted by both parties depicting different areas, both inside and outside of the structure. Interior photographs feature a large hall, with wooden floor with interior lighting at a somewhat subdued level. A significant array of colorful specialty lights are attached to the ceiling at both ends of the hall. A disco reflecting glass ball and several spot lights are also featured in the middle of the ceiling used for the purpose of casting visual effects onto the ceiling and surrounding walls.
- 10) The establishment features a full sound system and a “disc jockey” who controls the levels of recorded music and lighting features. The appellant indicated that the music and lights are strictly controlled by the disc jockey as to avoid loud music and unreasonable low lighting levels. Appellants also testified that activities within the establishment are tightly controlled by staff based upon the type and size of each event and that the facility does not remain open beyond 10 p.m. on any given evening.
- 11) There is one main entrance/exit to the facility and three additional doors that exit outside and that all doors have panic hardware, and there are clear pathways out those doors. Furthermore, the entrance doors enter in and the exit doors push outward. Two doors empty out to a grassy, unpaved area that has recently been cleared of high grass and brush.
- 12) In support of the Fire Department’s position, the Fire Chief testified that in his opinion the establishment is clearly used as a dancehall with a capacity of 100 persons or more and, as such, is within the scope of the enhanced sprinkler requirements of M.G.L. c. 148, s.26G½.
- 13) The Chief indicated that he had several concerns about the establishment in the event of a fire situation. The building has no fire alarm system and no system to warn occupants of a fire situation. It also has no windows nor any means to ventilate the roof in the event of a fire. He indicated that he has several concerns about egress in the event of an emergency. One exit opens into an adjacent parking and oncoming traffic and another exit leads to a soft grassy area. He noted that persons leaving the building in an emergency situation may have difficulty exiting the establishment under such circumstances, particularly if they are impeded by wearing roller skates. He also noted the existence of an approximately 7” lip which surrounds the skating floor which could potentially add to delay in the event of an emergency, panic situation.

- 14) The Whitman Fire Department provided testimony from Police Officer David Gregory, who has over several years worked police private details at the facility. Officer Gregory indicated that on numerous occasions, there have been issues of crowd control, where young patrons, have crowded into the main foyer especially on cold/rainy nights waiting to be picked up by parents. He also testified that he has witnessed very dim lighting situations during skating events and that the music has been very loud. He concluded that in his opinion, the establishment had many of the characteristics of a dance club. He also recalled at least one such event, in which there was a “glow skate” at the facility, which rendered the interior almost pitch black. The Appellant indicated that this event has not occurred again. Officer Gregory indicated that the average age of attendees at the events, particularly on weekend evenings, is 13-16 year olds. Officer Gregory indicated that many children are picked up/dropped off by parents for events at the facility. During pick-up times, the parking lot is usually crowded and in his opinion, it would be difficult for an emergency vehicle to access the lot at closing time.
- 15) The Fire Chief indicated that in the past EMT’s and emergency personnel have made hundreds of calls to building. They indicated to him the existence of loud music and dim lighting that they requested to be adjusted when rendering medical treatment.
- 16) The current operator of the establishment, who has operated the business for approximately two years, indicated that she has worked hard on the issues of loud music, dim lights and crowd control and has changed the type of music in order to reduce some of the negative factors. Both the Fire Chief and Officer Gregory concurred with the Appellant’s efforts and that things have improved since she has taken over the business. However, the fire chief does not agree with the Appellant that dancing does not occur within the facility based upon his experience and the observations of other town medical, fire and police personnel.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) 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**, discotheque, 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” (bold emphasis added). The law was effective as of November 15, 2004. The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 2) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this law found in c.148, s.26G1/2. The 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 acknowledged that the statute did not contain a definition of the words “nightclub, dance

hall, discotheque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by 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.26G1/2.

- 3) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 4) Although this building does not have all of the characteristics listed as factors to be considered in the 1-10-05 memorandum. The Board specifically noted in said memo that “the list of characteristics was not necessarily all-inclusive” and that “the factors may be applied individually or in combination depending upon the unique characteristics of the building...”.
- 5) This building, as currently used presents the type of unique characteristics envisioned by the Board in the 1-10-05 memorandum. When reviewed in total, said characteristics support this Board’s determination that the building is currently designed or used for occupancy on a routine and regular basis, as a “dance hall...” or similar entertainment purpose, within the scope of M.G.L. c. 148, s.26G½. The statute’s use of the modifying words: **“or similar entertainment purposes”**(emphasis added) is significant in this determination, as it indicates the legislative intent not to limit the law’s applicability to those buildings considered a nightclub or dancehall in a narrow sense, but to also apply

the enhanced fire protection to such buildings that have entertainment characteristics similar thereto.

Such characteristics in this building include:

- a) The existence of an entertainment license for dancing;
- b) The existence of many visual accessories, including colored decorative lighting and spot lights, disco reflecting balls and video projector to create an atmosphere typical of a dancehall or nightclub;
- c) The potential and actual existence of low lighting levels;
- d) Entertainment by recorded music generating above-normal sound levels;
- e) The regular and routine occurrence of dancing or dance-like activities typical of a dancehall;
- f) A specific area designated for dancing;
- g) Incidents of crowded or congested occupancy in certain areas of the building; and
- h) The potential for impeded egress and unsure footing in the event of an emergency exit situation, created by the use of roller skates.

G) Decision and Order

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the building located at 1055 Auburn Street, Whitman, MA. is a public assembly with a legal capacity of 100 or more persons and is currently used or designed as a “dancehall” or for “similar entertainment purposes”. Accordingly, the Order of the Whitman Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G½ is hereby affirmed. An adequate sprinkler system shall be installed in accordance with following timeline:

- 1. The submission of plans and specifications for the installation of sprinklers within 90 days of the date of this order; and
- 2. Complete installation within 3 years of the effective date of the statute, (by November 15, 2007).

H) Vote of the Board

Maurice Pilette, P.E. (Chairperson)	In favor
Paul Donga, P.E. (Vice Chair)	In favor

Chief Thomas Coulombe
Alexander Macleod
Peter E. Gibbons
John J. Mahan

In favor
Opposed
In favor
In favor

I) Right of Appeal

You are hereby advised that 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,



Maurice Pilette, P.E.. Chairman

Dated: August 14, 2006

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

Paul F. Cavanaugh, Esq.
Daly Cavanaugh, LLP
27 Mica Lane, Suite 101
Wellesley, Massachusetts 02481

AND BY 1ST CLASS MAIL, POSTAGE PRE-PAID, TO:

Chief Timothy P. Travers
Whitman Fire-Rescue
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