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

*Automatic Sprinkler Appeals Board*

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AIME R. DENAULT  
CHAIRMAN

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VICE CHAIRMAN

**Docket # 2013-06**  
**80-94 Commercial Street**  
**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. 26G, and Chapter 6, section 201, relative to a decision of the Holyoke Fire Department, requiring 80 Commercial Street, LLC (hereinafter referred to as the Appellant) to install automatic sprinklers throughout a building that it owns/operates located at 80-94 Commercial Street, Holyoke, Massachusetts.

**B) Procedural History**

By written notice dated March 20, 2013 and received by the Appellant on March 21, 2013, the Holyoke Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On April 29, 2013, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 12, 2013, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Attorney Michael J. Duval and Siegfried Porth, Architect. Appearing on behalf of the Holyoke Fire Department were Heather G. Egan, City Solicitor; Fire Chief John A. Pond; Fire Lt. Thomas Paquin; and Building Commissioner, Damian J. Cote.

Present for the Board were: Aime R. DeNault, Chairman; Maurice M. Pilette, Vice Chairman; Anthony DiNatale; Alexander MacLeod; and Peter Gibbons. Peter A. Senopoulos was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the determination of the Holyoke 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 2.  
Statement in Support of Appeal with Exhibits
  - 2-1. Descriptions of Building Construction
  - 2-2. Previous Building Assessments
  - 2-3. Economic Development Incentive Program Investment Tax Credit
  - 2-4. Property Card of Property
  - 2-5. Building Application approved by Holyoke Building Department
  - 2-6. Copies of E-mails between Building Department and Tom Paquin
  - 2-7. Building Commissioner's Determination Letter
  - 2-8. Determination / Order of Notice from the Holyoke Fire Department
  - 2-9. Job Estimate from Raymond R. Houle Construction, Inc.
  - 2-10. Breakdown of Electrical Services
3. Notice of Hearing to Appellant
4. Notice of Hearing to Holyoke Fire Department
5. Copies of two Memoranda that accompany Hearing Notices
6. Appellant's Plans (A1-A6 and E1-E2)
7. Appellant's Photos (15 pages)
8. Appellant's Submission – cost estimates for sprinklers – Red Hawk
9. Appellant's Submission – cost estimates for sprinklers – Industrial Technical Services, Inc.
10. Joint Stipulation of the Parties
11. Holyoke Fire Department Submission (tabs 1-10)

**E) Subsidiary Findings of Fact**

- 1) By written notice dated March 20, 2013 and received by the Appellant on March 21, 2013, the Holyoke Fire Department issued a determination requiring automatic sprinklers to be installed throughout the subject building. According to the notice, the determination was issued pursuant to the provisions of M.G.L. c. 148 s. 26G. On April 29, 2013, the Appellant filed an appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing on June 12, 2013, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representatives for the Appellant testified that Appellant owns a mixed use building complex with three interconnected portions, referenced as "A", "B" and "C", which were constructed at various times in the early 1900's. For the purposes of this appeal, the parties agreed that portion "A" is the only portion of the building complex that is subject to the sprinkler order, since the remaining portions are already sprinklered. Portion "A," consists of two stories with a basement and features warehouse/manufacturing space with concrete flooring, exposed brick, masonry walls/ceilings and consists of approximately 19,404 s.f. of floor area. Portions "B" and "C" of the building features 3,540 and 7,968 s.f. of floor area respectively. The building in total consists of approximately 30,912 s.f.
- 3) The representatives for the Appellant testified the building was purchased in October 2012 for \$175,000.00. The reduced purchase price was the result of the City of Holyoke's economic development incentive program, which included significant tax incentives. The Appellant purchased the building, in large part, to house her business which manufactures machinery used in creating packaging material. According to City records and by agreement of the parties, the building has an assessed value of \$310,900.00.

- 4) The Appellant indicated that at the time of purchase, it was thought that the building featured a sprinkler system throughout the building. However, it was soon discovered that portion "A" did not have a sprinkler system. Subsequently, it was also determined that the magnitude of the renovations and repairs throughout the building were much greater than expected. In Portion "A" alone, it was determined that significant alterations, renovations and repairs would be required. Such work includes, but is not limited to: new construction of unenclosed stairs and new exit doors, repositioning of interior walls, demolition of several existing doors, construction of exterior doors, egress platform, stairs and an exterior stairway and door, new and updated electrical system, repair and painting of ceilings/walls, sealing of concrete floors, replacement of the HVAC unit. There was also considerable alteration, repair and renovation activity in portions "B" and "C." Such work included such items as: the demolition and repositioning and reconfiguration of multiple interior walls and doors and the construction of a ramp to facilitate the movement of material. Work in portions "B" and "C" also included significant electrical and mechanical upgrades and the installation/update of the HVAC system. Additional work throughout the building also included: a new roof, flooring, painting and a new kitchen area.
- 5) The representatives for the Appellant indicated that the total cost of the work to the building is approximately \$285,430.00. However, it was noted that some of the permits were still outstanding.
- 6) The representatives of the Appellant presented two estimates to complete the installation of an adequate system of automatic sprinklers in Portion "A". One cost estimate was for \$39,900.00 and another for \$42,655.00.
- 7) The Appellant contends that the majority of the construction work occurring at the subject location should not be considered "major," as that term is used in M.G.L. c. 148, s. 26G and in the October 14, 2009 guidance document issued by this Board. It was the Appellant's opinion that the type of work on this project that should be classified as "major," only totals \$79,515.00 and that this amount is significantly less than 33% of the assessed value of the building.
- 8) The Appellant also contends that the scope of the work does not affect 33% or more of the total gross square footage of the building. The representatives contend that the "affected areas" should be determined by including only the "work areas" which the Appellant would define as the floor area abutting renovated items such as a renovated door or wall and physically occupied by construction workers.
- 9) In support of the Holyoke Fire Department's determination, Chief Pond testified that the Order was issued based upon a review of the extensive nature and scope of the work occurring throughout the entire building. He determined that major alterations were taking place affecting a substantial portion of the building. In calculating the cost of the work, he did not include costs of the work to the roof, kitchen area or cosmetic items, such as painting. However, notwithstanding these deductions, he determined that the cost of the work was still well over 33% of the assessed value. Chief Pond indicated that he is sensitive to the economic circumstances of this project and the unexpected costs, including those involved with the sprinkler installation. Accordingly, he offered the Appellant the option to install the required sprinkler system over an extended period of time.
- 10) The representatives for the Fire Department also indicated that appellant's method of calculating the affected area using only the immediate "work area" is in error and that clearly the area affected by the work exceeds 33% of the total s.f. of the building, the threshold amount established by the board in its October, 2009 guidance document.

**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, reflects recent amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The new 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) The subject building consists of approximately 30,876 s.f. in total floor area and its current use and occupancy is not within any type of building that is exempt from the provisions of s. 26G. The building clearly totals, in the aggregate, more than 7,500 gross s.f. in floor area.
- 3) Since this building is not newly constructed or undergoing an addition, the provisions of s. 26G will apply only if major alterations or modifications are made to the existing building. In determining whether major alterations are taking place, the Board has relied upon the factors stated in its October 14, 2009, guidance document which was referenced by the parties. In the document, the Board discussed the meaning of the words “major alterations” as those terms are used in the statute. The Board, generally guided by *Congregation Beth Shalom & Community Center, Inc. v. Building Commissioner of Framingham et. Al., 27 Mass. App. Ct. 276 (1989)*, indicated that it would review factors such as: **(A) the nature** of the work and **(B) the scope** of the work or cost/ benefit of sprinkler installation. In determining the **nature** of the work, the Board indicated that it would determine if the work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations. This Board also established two presumptions that could be used to determine if the **scope** of the alterations or modifications are “major.” The Board concluded that major alterations or modifications could reasonably be considered major in scope when: (1) such work affects thirty-three (33)% or more of the “total gross square footage” of the building, calculated in accordance with section 26G or (2) when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33)% of the assessed value of the subject building. It was the conclusion of the Board that if the nature of the work is the type of work described in **A and** also meets at least one of the two presumptions described in **B** above, then it can be reasonable to conclude that the alterations or modifications are “major,” thus requiring sprinklers throughout the building.
- 4) According to City records and by agreement of the parties, the building has an assessed value of \$310,900.00. To date, the total cost of the work on the building is approximately \$285,430.00. Clearly, this cost figure exceeds 33% of the assessed value. The Appellant’s opinion that the nature of work that should be considered “major” only totals \$79,515.00, an amount significantly less than the 33% of the assessed value of the building, is without merit. As indicated in its October guidance document, this Board acknowledged a common sense distinction between “minor repairs or cosmetic” work vs. major alterations. The Board gave several examples of each, but clearly indicated that the examples used were not all inclusive. The Appellant’s position that the installation of new entryways, doors, stairways and related

demolition and masonry work should not be considered within the scope of “major” alterations, since they are a “new” installation, rather than a “reconstruction or repositioning” of an existing entry way, is not consistent with the public safety intent of the law. The legislative activity to amend the provisions of M.G.L. c. 148, s. 26G 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 clear intent of the law was to require sprinkler protection in certain existing, non-residential buildings which undergo major renovation or alteration. Other work that the Appellant seeks to exclude from the cost of major alterations but the Board finds otherwise, include: The installation of an HVAC system (\$23,600.00); New front entrance including, stairs at front elevation and stairway, including excavation, poured footings new doors/hardware (\$24,100.00); Steel stairs and railings (\$28,000.00); Electric service updates and repairs including those related to the HVAC (\$19,000.00). Such costs added to Appellant’s original amount totals over \$176,000.00 and are well over 33% of the assessed value of the property, thus making unnecessary the need to delve into other work items that could possibly be classified as maintenance or mere cosmetics.

- 5) The Board further finds that Appellant’s contention that the scope of the work does not affect 33% or more of the total gross square footage of the building has no merit. The construction and/or demolition and repositioning or reconfiguration of multiple interior walls, including the installation of associated HVAC, mechanical, and electrical installation throughout this building (with the possible exception of the 6,000 s.f. basement) clearly affects at least 80% of the building area. The Appellant’s contention that “affected areas” should be calculated using only several feet away from the physical material subject to construction/demolition would frustrate the intent of the law. The Appellant failed to cite any source or legal basis for such a narrow and unusual calculation which, if applied, would almost never trigger sprinkler installation.

**G) Decision of the Automatic Sprinkler Appeals Board**

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board hereby unanimously **upholds** the determination of the Holyoke Fire Department to require the installation of an adequate system sprinkler protection throughout Portion “A” of the building complex located at 80-94 Commercial Street, Holyoke in accordance with the requirements of M.G.L. c. 148, s. 26G. Plans for the installation of sprinklers throughout the entire building shall be submitted to the Head of the Holyoke Fire Department within ninety (90) days of the date of this decision. Sprinkler installation shall be in accordance with the following deadlines:

1. Portion “A”, First Floor – by January 1, 2014;
2. Portion “A”, Second Floor – upon occupancy but no later than January 1, 2015; and
3. Portion “A”, Basement – upon occupancy but no later than January 1, 2016.

**H) Vote of the Board**

Aime R. DeNault, Chairman	In Favor
Maurice M. Pilette, Vice Chairman	In Favor
Anthony DiNatale	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	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,



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Aime R. DeNault, Chairman

Dated: August 16, 2013

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

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