

The Commonwealth of Massachusetts

Department of Public Safety

Board of Building Regulations and Standards

One Ashburton Place, Room 1301

Boston, Massachusetts 02108-1618

Phone (617) 727-7532 Fax (617) 227-1754

TTY (617) 727-0019

www.mass.gov/dps

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Kevin M. Burke
Secretary

Thomas G. Gatzunis, P.E.
Commissioner

Gary Moccia, P.E.
Chairman

Alexander MacLeod, R.A.
Vice Chairman

Robert Anderson
Administrator

Date: September 29, 2008

Name of Appellant: G. Emil Ward, Esq.

Service Address: 92 State Street, Suite 900
Boston, MA 02109

In reference to: 53 Wilbraham Avenue
Springfield, MA. 01104

Docket Number: 05-468

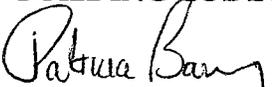
Property Address: 53 Wilbraham Avenue
Springfield, MA

Date of Hearing: 12-18-07

We are pleased to enclose a copy of the decision on the request for certain variances from the Building Code.

Sincerely:

BUILDING CODE APPEALS BOARD


Patricia Barry, Clerk

cc: Building Code Appeals Board
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-468

Leah Daniels,)
Appellant)
)
v.)
)
City of Springfield,)
Appellee)
)

BOARD’S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board (“Board”) on Appellant’s application filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant asks the Board to grant variances from, to provide clarification of, or to conclude that Appellant met the requirements of 780 CMR 709-1, Table 602; of the 6th Edition of Massachusetts State Building Code (“Code”).

By letter dated November 21, 2007, the City of Springfield informed Appellant that the suspended ceiling panel and grid system installed throughout Appellant’s property at 53 Wilbraham Street (“Property”) did not meet the requirement of being a one-hour fire separation assembly (ceiling/floor) for use in an R-2 use group Type 5B construction (multi dwelling of more than two units, occupants not transient).

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR 1.02 et. seq.; and 780 CMR 122.3.4, the Board convened a public hearing on December 18, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appellant did not appear at the hearing, nor did any representatives of Appellant. John F. Cassaboom, Thomas Lagodich, and F. Robert Furey appeared on behalf of Appellee.

Materials Considered

State Building Code Appeals Board Appeal Application, dated July 21, 2007, signed by G. Emil Ward, counsel on behalf of Appellant.

Exhibit 1: Affidavit of Erskine E. Chaffin, dated August 16, 2007, originally provided to the Housing Court Department of the Trial Court in C.V. No. 06-TR-929 (“Chaffin Affidavit”).

Exhibit 2: Color photocopy of exterior of structure located at 53 Wilbraham Road, Springfield, MA.

Exhibit 3: Town of West Springfield Building Department re-inspection report on 53 Wilbraham Street, dated November 21, 2007, by Thomas Lagodich, Building Inspector/Enforcement Officer, addressed to Attorney Emil Ward, which includes copies of photographs of the relevant parts of the interior of the Property. ("Lagodich Report").

Discussion

The issue is whether the Property met the requirements of the 6th Edition of the Building Code with respect to one-hour fire separation. *See 780 CMR 709.1, Table 602.* The Property includes a five-dwelling-unit building in which Armstrong suspended ceilings had been installed throughout.

The Lagodich Report concluded that the structure does not meet the Code's requirements for a one-hour fire separation between dwelling units. Appellant argued, in her written submissions, that the suspended ceiling configuration created the required one-hour fire separation. City officials have consistently concluded the ceiling configuration did not. The City concluded, after examining ceiling panels on floors, that the suspended ceiling was at least 18" below the structure's original ceiling.

The City reminded the Board that, under a prior Board decision (05-023), Appellant was allowed to have a monitored fire protection system in lieu of having to install sprinklers. However, the City discovered that the telephone lines for the monitored system had been disconnected. In addition, the City stated that the Property is under a court order not allowing Appellant to sell the Property or to add any tenants to the property. The City did not know how many tenants were actually residing there.

The Board also found that the Chaffin Affidavit submitted by the architect of record was made at a time when the architect was not licensed. The Chaffin Affidavit asserted that Appellant was in compliance with 780 CMR 709-1, Table 602

Decision

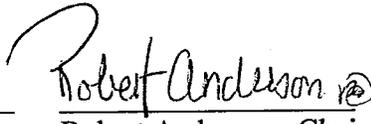
Following testimony, and based upon relevant information provided, Board members considered the following motion. The Chair entertained a motion to **deny** the appeal, based on the fact that the fire rating of the system, as described in the Lagodich Report, did not meet the requirements of the 6th Edition of the Building Code. ("Motion"). The Board voted to allow the Motion, as described on the record. The Board voted as indicated below.

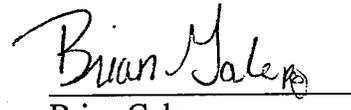
X..... Appeal Denied

The vote was:

X.....Unanimous


Dana Haagensen


Robert Anderson - Chair


Brian Gale

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: September 29, 2008


Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBSR/Department of Public Safety
One Ashburton Place – Room 1301
Boston, MA 02108

STATE BUILDING CODE APPEALS BOARD SIGN-IN SHEET

Docket Number 05-468 Appellant Ward, Esq. Building Official Lagodich

Hearing Date 12-18-07 Hearing Time 9:30 a.m.

Appeals Board Members Haagensen : Anderson : Gale

PLEASE PRINT LEGIBLY

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Shu F. Haagensen	1005 West Kingsley St.	413-287-6412
F. Robert Furey	70 Tingley St. Spfld Mm.	413-787-8037
Tom Lagodich	26 Central St W. Spfld	413-246-5551
Brian Gale	BBRS	
Rob Anderson	DPS	
Dana Haagensen	DFS	978-567-3376
Patricia Barry	BBRS	



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Robert Anderson
Administrator

28-Aug-07

Mr./Mrs. G. Emil Ward, Esq.
92 State Street, Suite 900
Boston, MA. 02109

Docket Number 05-468
Property Address 53 Wilbraham Avenue Springfield, MA. 01104
Hearing Location National Guard Armory 14 Minuteman Lane, Wellesley, MA
Hearing Date and Time 09-06-07 10:30 a.m.

Dear Mr./Mrs. Ward, Esq.

The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

The State Building Code Appeals Board requires your presence or that of your representative at its hearing relative to the above case.

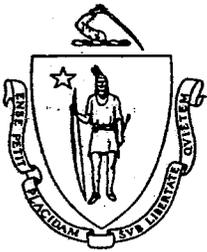
Please bring with you a copy of the record, including any plans, sketches, drawings, etc, that will help to give the Appeals Board grounds to adjudicate this appeal. The State Building Code Appeals Board hearings are held pursuant to 801 CMR 1.02 Informal Fair Hearing Rules.

NO POSTPONEMENTS OR REFUNDS WILL BE GRANTED. In order to reschedule an appeal case, you must first withdraw the original case and file a new application. A new application fee will be required.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD


Patricia A. Barry
Coordinator



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Robert Anderson
Administrator

28-Aug-07

Mr./Mrs. Lagodich
Building Commissioner
26 Central St., Suite 4
West Springfield, MA. 01089-2757

Docket Number 05-468
Property Address 53 Wilbraham Avenue Springfield, MA. 01104
Hearing Location National Guard Armory 14 Minuteman Lane, Wellesley, MA
Hearing Date and Time 09-06-07 10:30 a.m.

Dear Mr./Mrs. Lagodich

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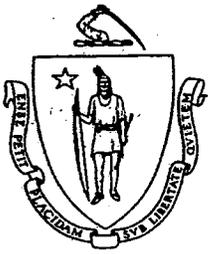
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28-Aug-07

Chief Gary G. Cassanelli
605 Worthington Street
Springfield, MA 01105

Docket Number	05-468
Property Address	53 Wilbraham Avenue Springfield, MA. 01104
Hearing Location	National Guard Armory 14 Minuteman Lane, Wellesley, MA
Hearing Date and Time	09-06-07 10:30 a.m.

Dear Chief Gary G. Cassanelli

The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

This notice is forwarded to you by the State Building Code Appeals Board as a courtesy. You are not compelled to attend but are encouraged to do so if you have a particular interest in the case.

If you have any questions relative to the above referenced appeal, please contact your BUILDING OFFICIAL.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

Patricia A. Barry
Coordinator

STATE BUILDING CODE APPEALS BOARD

OPENING STATEMENT:

Mr. Chairman:

The date is: December 18, 2007 the docket # is 05-468

The appellant is: G. Emil Ward, Esq., Ward & Associates

92 State Street, Suite 900, Boston, MA. 02109

The property involved is:

53 Wilbraham Avenue, Springfield, MA. 01104

The appeal is based on the provisions of the 6th Edition of the State Building Code relative to: (Section/Table)

780 CMR 1014.6.2, Section 709-1 Table 602, Sections 1304.1, 1305.2.8, 3618.1

Relief desired:

DECISION: (Please complete this section at the hearing).

The Building Official supported/opposed the appeal filing:

*Motion made by Brian to Deny
2nd by Dana*

Board members voted to:

Grant Appeal

Deny Appeal

Reason for approval/denial: _____

The decision was unanimous/ objected to by: _____

Reason for objection: _____

Provisos (if any): _____

BOARD: _____

STATE BUILDING CODE APPEALS BOARD

DOCKET NUMBER: 05-468

PROPERTY ADDRESS: 53 Wilbraham Avenue, Springfield, MA. 01104

APPELLANT: G. Emil Ward, Esq.

BUILDING OFFICIAL: Curtis Meskus

(check one)

Item #	Item	Document Dated	Date Received	Appellant	Building Official
1.	Exhibit #4 Application Exhibit #3 Letter from Tom L to G. Emil Ward	11-21-07 11-21-07	12-18-07		✓
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					



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Robert Anderson
Administrator

05-Dec-07

Mr./Mrs. G. Emil Ward, Esq.
92 State Street, Suite 900
Boston, MA. 02109

Docket Number 05-468
Property Address 53 Wilbraham Avenue Springfield, MA. 01104
Hearing Location National Guard Armory 14 Minuteman Lane, Wellesley, MA
Hearing Date and Time 12-18-07 9:30 a.m.

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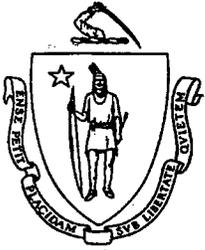
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Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

Patricia A. Barry
Coordinator



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Department of Public Safety

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05-Dec-07

Mr./Mrs. Lagodich
Building Commissioner
26 Central St., Suite 4
West Springfield, MA. 01089-2757

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07-Dec-07

Chief Gary G. Cassanelli
605 Worthington Street
Springfield, MA 01105

Docket Number	05-468
Property Address	53 Wilbraham Avenue Springfield, MA. 01104
Hearing Location	National Guard Armory 14 Minuteman Lane, Wellesley, MA
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Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD


Patricia A. Barry
Coordinator

07-Dec-07

WARD & ASSOCIATES

Attorneys at Law

92 State Street, Suite 900
Boston, Massachusetts 02109
(617) 248-9765
FAX (617) 742-8599
www.wardlawonline.com

July 21, 2007

Program Manager, Board of Appeals
Board of Building Regulations and Standards
One Ashburton Place, Room 1301
Boston, MA 02108-1618

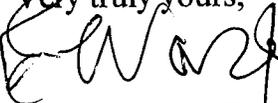
Re: Appeal of Leah Daniels

Dear Sir or Madam:

Enclosed please find 4 original application forms for an appeal of an order regarding 53 Wilbraham Avenue, Springfield, MA. The CD is also enclosed.

My vacation begins today. We will return to our office on July 30, 2007. Please note that after having checked with the counsel for the City of Springfield, I have ascertained that neither he nor his inspectors are available during the month of August. Therefore, I am asking that this appeal be scheduled for hearing on September 6, 2007. Thank you.

Very truly yours,



G. Emil Ward, Esq.

GEW:pne

State Building Code Appeals Board

Summary to be filled out by Appeals Board Clerk

Pursuant to Docket no. (*insert Docket no.*) 05-468

Based on the following findings of fact/testimony:

1. _____
2. _____
3. _____
4. _____

A motion was made by (*insert Board member name*) Brian

A second was made by (*insert Board member name*) Dana

The motion is:

With the following conditions:

1. _____
2. _____
3. _____

The Board voted (to (*check one*) grant _____ or deny _____ the variance Continuance = 60 Days
from 780 CMR Sections (*cite all sections that apply*) 1014.6.2, Sect. 709-1 Table 602, Sect 1304.1, 1305.2.8, 3618.1

Members voting for the motion: unanimous

Members voting against the motion: _____





The Commonwealth of Massachusetts

Department of Public Safety Board of Building Regulations and Standards

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Phone (617) 727-7532

Fax (617) 227-1754

STATE BUILDING CODE APPEALS BOARD APPEAL APPLICATION FORM

DOCKET NUMBER (State Use Only)	05-468	DATE	7/21/07
-----------------------------------	--------	------	---------

The undersigned hereby appeals to the State Board of Building Regulations and Standards from the decision of the following person. (Please fill-in the name of the appropriate municipal or state building inspector or other authority. Also, Also indicate if this is a request for a *hearing de novo* (new hearing) relative to a decision of a municipal app board.)

Building Official from the City/Town of:	Robert Feury - Building Inspector
Board of Appeals from the City/Town of: (Request for <i>hearing de novo</i>)	City of Springfield
State Building Official:	
Other:	

Please mark the appropriate box indicating the requested action to be considered by Appeals Board members.

Variance		Order		Direction	
X					
Interpretation		Failure to Act		Other	
X					
STATE USE ONLY					
Fee Received	150.00				
Check Number	5130				
Received By	P. Barry				

(This section must be completed or the application will be returned.)

Has the building or structure been the subject of an appeal by this or any other appeals board previous to this filing?

No Yes If, yes, please indicate the date of the previous appeal, whether the matter was heard before a local or state appeals board, the code section that was at issue, and the specifics of the decision (i.e. a variance was granted\ not granted).

Please take care to submit all *written* supporting documentation with this application to allow time for review. However, Board members reserve the right to continue proceedings if such material warrant extensive review.

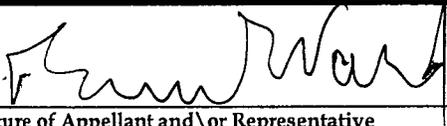
Please provide a brief description of the desired relief below. Additional information may be attached if space is not sufficient. All appropriate code sections that are subject to appeal must be identified in the description.

See attached sheet incorporated by reference

Please complete the following section completely and accurately.

Name of Appellant:	G. Emil Ward, Esq.	Representing:	Leah Daniels
Address For Service	92 State Street, Suite 900, Boston, MA 02109		
Telephone Number:	617-248-9765	Fax Number:	617-742-8599
Address of Subject Property (if different from service address):	53 Wilbraham Avenue Springfield, MA		
What is appellant's connection to subject property?	Owner		

X



G. Emil Ward, Esquire

Signature of Appellant and/or Representative

Please Print Name Legibly

Please return applications to:
 Program Manager, Board of Appeals
 Board of Building Regulations and Standards - One Ashburton Place, Room 1301
 Boston, MA 02108-1618

DESCRIPTION OF BUILDING OR STRUCTURE RELATIVE TO THE MASSACHUSETTS STATE BUILDING CODE (7th EDITION): (Check as appropriate)

Do not complete the tables below for one and two family dwellings. Proceed to section entitled "Brief Description of the Proposed Work".

DESCRIPTION OF PROPOSED WORK (check all applicable)				
New Construction	Existing Building	Repair(s)	Alteration(s)	Addition
Accessory Bldg.	Demolition	Other Specify: _____		
Brief Description of Proposed Work: <u>See attached sheet of proposed work</u>				

USE GROUP AND CONSTRUCTION TYPE					
USE GROUP (Circle appropriate Use Group)			CONSTRUCTION TYPE		
A Assembly	A-1	A-2	A-3	1A	
	A-4	A-5		1B	
B Business				2A	
E Educational				2B	
F Factory	F-1	F-2		2C	
H High Hazard				3A	
I Institutional	I-1	I-2	I-3	3B	
M Mercantile				4	
R Residential	R-1	R-2	R-3	5A	
S Storage	S-1	S-2		5B	X
U Utility	Specify: _____				
M Mixed Use	Specify: _____				
S Special Use	Specify: _____				

COMPLETE THIS SECTION IF EXISTING BUILDING UNDERGOING RENOVATIONS, ADDITIONS AND/OR CHANGE IN USE

Existing Use Group: <u>R2 before renovations</u>	Proposed Use Group: <u>Five units</u>
Existing Hazard Index (780 CMR 34): _____	Proposed Hazard Index (780 CMR 34): _____

BUILDING HEIGHT AND AREA		
BUILDING AREA	Existing (if applicable)	Proposed
Number of Floors or stories include basement levels	4	
Floor Area per Floor (sf)	1,530 sq. ft.	
Total Area (sf)	4,652 sq. ft.	
Total Height (ft)	36 ft.	

Brief Description of the Proposed Work:

STATE BUILDING CODE APPEALS BOARD
Service Notice

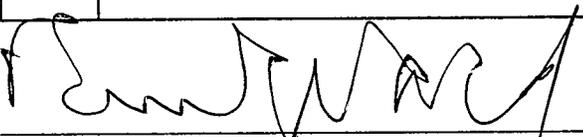
I, G. Emil Ward, as counsel for the

Appellant/Petitioner Leah Daniels an appeal filed with the State

Building Code Appeals Board on July 21, 20 07

HEREBY SWEAR UNDER THE PAINS AND PENALTIES OF PERJURY THAT IN ACCORDANCE WITH THE PROCEDURES ADOPTED BY THE STATE BOARD OF BUILDING REGULATIONS AND STANDARDS AND SECTION 122.3.1 OF THE STATE BUILDING CODE, I SERVED OR CAUSED TO BE SERVED, A COPY OF THIS APPEAL APPLICATION ON THE FOLLOWING PERSON(S) IN THE FOLLOWING MANNER:

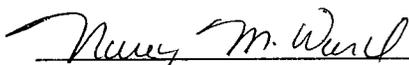
	NAME AND ADDRESS OF PERSON OR AGENCY SERVED	METHOD OF SERVICE	DATE OF SERVICE
1	Robert Furey 70 Tapley Street Building Division Springfield, MA 01104	overnight	7/21/07 BENT
2			
3			


Signature: Appellant or Petitioner

On the 21 Day of July 20 07 PERSONALLY APPEARED

BEFORE ME THE ABOVE NAMED G. Emil Ward on behalf of Leah Daniels
(Type or Print the Name of the Appellant)

AND ACKNOWLEDGED AND SWORE THE ABOVE STATEMENTS TO BE TRUE.


NOTARY PUBLIC

May 31, 2013
MY COMMISSION EXPIRES

Supplement to Appeal of Leah Daniels Dated July 21, 2007
Re 53 Wilbraham Avenue, Springfield, MA

1. PREVIOUS APPEAL

This property was the subject of a previous appeal which resulted in the grant of a variance in Ms. Daniel's favor on February 23, 2007. It was appeal number 05-023. The decision relieved her of the duty to place a sprinkler system in her renovated 5 Unit building. A copy of that decision is attached.

2. RELIEF DESIRED

The appellant, Ms. Daniels, seeks relief from and/or calcification and guidance as to whether or not the system of 1 hour rated fire retardant ceiling tiles, and the appropriate framing for said fire retardant Armstrong tiles, in conjunction with the hard wired smoke alarm/heat detection system, with battery backup, and 24 hour per day, 7 day per week monitoring which this Board allowed her to install in the subject property in conjunction with the above describes dropped ceiling tiles constitutes compliance with 780 CMR sec. 709-1, Table 602. The building inspector, Bob Furey of Springfield has found that it does not. His special report of May21, 2007, was not served on the undersigned until June 25, 2007. A second inspection of the building and system described was done by Inspector Thomas Lagodich. His report is dated July 12, 2007 and is also attached hereto.

The appellant is particularly aggrieved in light of the fact that the same inspector who now claims there is no compliance today, inspected and approved the installation of the above described dropped ceilings in October of 2005. Also enclosed herewith is the grant of a temporary

certificate of occupancy from the Code Enforcement Commissioner of Springfield, Steven Desilets, dated October 26, 2005 which clearly states that all work necessary to allow occupancy of Units 1-4 was completed. The building was finished before the end of November 2005, and tenants were allowed to move in. However, the city failed to issue the permanent certificate of occupancy. The only work remaining in order to obtain a permanent certificate of occupancy was some finish work and sheetrocking on the top floor. This means that the city inspected and approved in all of its periodic inspections the very same dropped ceilings and fire retardant ceiling tiles it now claims do not constitute compliance with the Code.

We have enclosed the opinion of our expert, Ron Baker in affidavit form. He is construction consultant for HUD, home inspector, and has vast experience in the Building Code, in among his many other credentials.

We have also enclosed proof that the system was installed as allowed by the Board in February of 2005. It is signed by the installer as well as the Chief of Fire Prevention in Springfield, Chief Cassaboom, and is entitled: Fire Alarm System Record of Completion. It is dated July 1, 2005

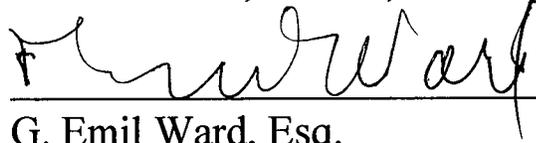
WARD & ASSOCIATES

Attorneys at Law

92 State Street, Suite 900
Boston, Massachusetts 02109
(617) 248-9765
FAX (617) 742-8599
www.wardlawonline.com

Supplemental Service Notice

I, G. Emil Ward, hereby swear under the pains and penalties of perjury that as counsel for Leah Daniels, on July 21, 2007, in accordance with the procedures adopted by the State Board of Building Regulations and Standards and Section 122.31 of the State Building Code, I served or caused to be served, a copy of the appeal application attached hereto on Mr. Thomas Lagodich in the following manner: by overnight mail or delivery such that I received a tracking number for said application to him at Town of West Springfield, Building Dept., Code Enforcement, 26 Central Street, Suite 4, West Springfield, MA 01089-2757.



G. Emil Ward, Esq.

On July 21, 2005, personally appeared the above named G. Emil Ward on behalf of Leah Daniels and acknowledged and swore the above statements to be true.


Nancy M. Ward

My commission expires: May 31, 2013

Exhibit #1

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS

HOUSING COURT
DEPARTMENT OF THE TRIAL
C.V. NO. 06-TR-929

_____)
City of Springfield)
Code Enforcement Department)
Housing Division,)
Plaintiff)
)
v.)
)
Leah Daniels (Owner),)
Defendant)
_____)

Affidavit of Erskine E. Chaffin

I, Erskine E. Chaffin, hereby depose and say that:

1. I am the owner of Chaffin & Associates an architectural and planning company located at 121 Chestnut Street, Springfield, MA 01103;

2. I am a registered architect and have been in good standing in the Massachusetts jurisdiction since at least ^{JAN. 1972 EEC} ~~August 13, 2004~~ through the present date.

3. On August 13, 2004, I signed on as the architect for the rehab of the property standing at 53 Wilbraham Avenue, Springfield, MA owned by Ms. Leah Daniels.

4. I drafted certain specs for the building when the job began as the rehab of a five-family property and filed them with the City of Springfield's Building Department.

5. I am receipt of the inspection report issued by Mr. Thomas Lagodich, Building Inspector/Enforcement Officer for the Town of West Springfield regarding the above-referenced property.

6. On August 16, 2007, I inspected the property at 53 Wilbraham Avenue, specifically looking at each of the alleged violations on Mr. Lagodich's July 12, 2007 report.

7. Having done so, it is my opinion that Item 2, the alleged violation for no fire separation is in fact not a violation. Ms. Daniels has the appropriate Armstrong, UL rated one hour fire rated fire separation system on all applicable floors. She is therefore in compliance with 780 CMR § 709-1, Table 602.

8. With respect to the other three alleged violations, numbers 3 through 5, I have inspected these as well. It is my opinion that she is in compliance with the State Building Code and the sections cited therein.

Date: August 16, 2007

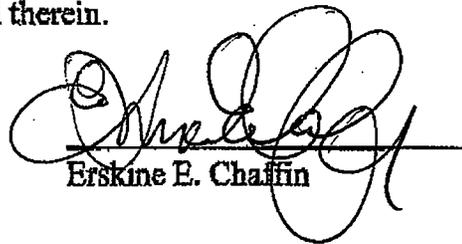
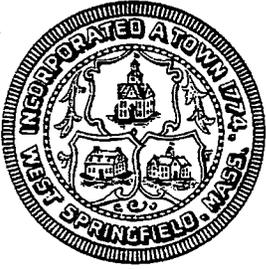

Erskine E. Chaffin

Exhibit #2



53 Wilbraham Rd 9-5-07
Spfld MA



TOWN OF WEST SPRINGFIELD

Building Department

Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

Phone: (413) 263-3059 Fax: (413) 263 3018

E-Mail: tlagodich@west-springfield.ma.us

Exhibit #3

November 21, 2007

Attorney Emil Ward
C/O Ward & Associates
92 State Street, Suite 900
Boston MA 02109

Re: Re-inspection report on 53 Wilbraham St, Springfield.

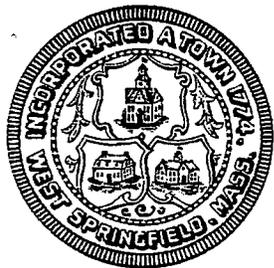
Dear Mr. Ward;

As you are aware, I re-inspected the multi-family structure (5 dwelling units) located at 53 Wilbraham St in Springfield on November 11, 2007.

At issue is whether or not the suspended ceiling panel and grid system installed throughout 53 Wilbraham St meets the requirement of being a 1 hour fire separation assembly (ceiling/floor) for use in a R-2 use group Type 5B construction (Multi dwelling of more than two units – occupants not transient). Unfortunately the answer is no this installation does not meet the requirement.

Please note, that to insure accuracy, I spent a good deal of time researching this issue with other qualified sources, notably a State Building Inspector Gordon Bailey, two Architects and with Mr. Jeffery Wagaman, a technical representative from the Armstrong Company (the manufacturer of the ceiling system in question). I have enclosed 12 captioned pictures taken at 53 Wilbraham St on 11-8-07 to verify the problems/violations, some of which I list below along with some definitions:

1. When asked “ will ceilings alone provide a 1 hour fire rating” - **Jeffrey Wagaman with Armstrong Company** (manufacturer of the suspended ceiling tiles in question) stated “ fire resistance ratings apply to a floor/ceiling assembly or roof/assembly in its entirety. Individual components, such as ceiling panels or suspended grid systems, **are not assigned fire resistance ratings.** *(part of the assembly are the walls which are not fireblocked (see pictures 1 through 5).*
2. **Fireblocking** - Building material installed to resist the free passage of flame, smoke and gases into other parts of the building through concealed spaces.
3. **1 hour fire resistance rating** - the time period that an assembly resists the spread of fire and flaming from both sides of the assembly, this includes all penetrations *(lights, smoke detectors, ductwork, etc).*
4. **Penetration** – an opening created in a membrane or assembly to accommodate penetrating items for electrical, mechanical, environmental and communication systems. *(pictures 6 through 12 show numerous unrated penetrations in the ceiling system which would allow the passage of smoke and gases and the spread of fire).*



TOWN OF WEST SPRINGFIELD

Building Department

Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

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E-Mail: tlagodich@west-springfield.ma.us

5. **Poor grid and panel installation**, which would allow the passage of smoke and gases and the spread of fire with no hold down clips installed and tees not locked in (Pictures 5A, 10 and 11).
6. **A requested narrative** and stamped affidavit detailing the 1 hour fire rated ceiling/floor assemblies with UL listings used in the re-building of this structure was requested for Ms. Daniels Architect however I did not receive one.
7. **Pictures of openings** from floor to floor and from dwelling units to passageways and other units that allow the passage of smoke, gases and the spread of fire are enclosed.
8. **Sound Transmission Control** is required between dwelling units – I do not believe the installed of this ceiling system will meet the sound transmission class of 45 for air-borne noise required for Residential Use Groups.

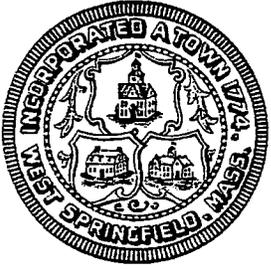
It is very apparent to me that this remodeled structure does not meet the Building Code requirements for a 1 hour fire separation between dwelling units. In structures of this use and type of construction (older balloon type construction), it is imperative to have an optimum combination of proper active and passive fire protection design in place to ensure life safety and structural protection.

Please feel free to call if you have any questions.

Sincerely,

Thomas Lagodich
Building Inspector/Enforcement Officer

CC: Housing Court Spfld, Spfld Building Dept.



TOWN OF WEST SPRINGFIELD

Building Department

Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

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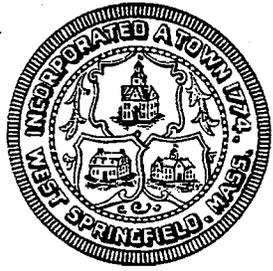
Pictures of 53 Wilbraham Ave taken on 11-8-07

St

Picture 1



Plumbing – electrical wiring openings through floors allows passage of fire and smoke – not allowed



TOWN OF WEST SPRINGFIELD

Building Department

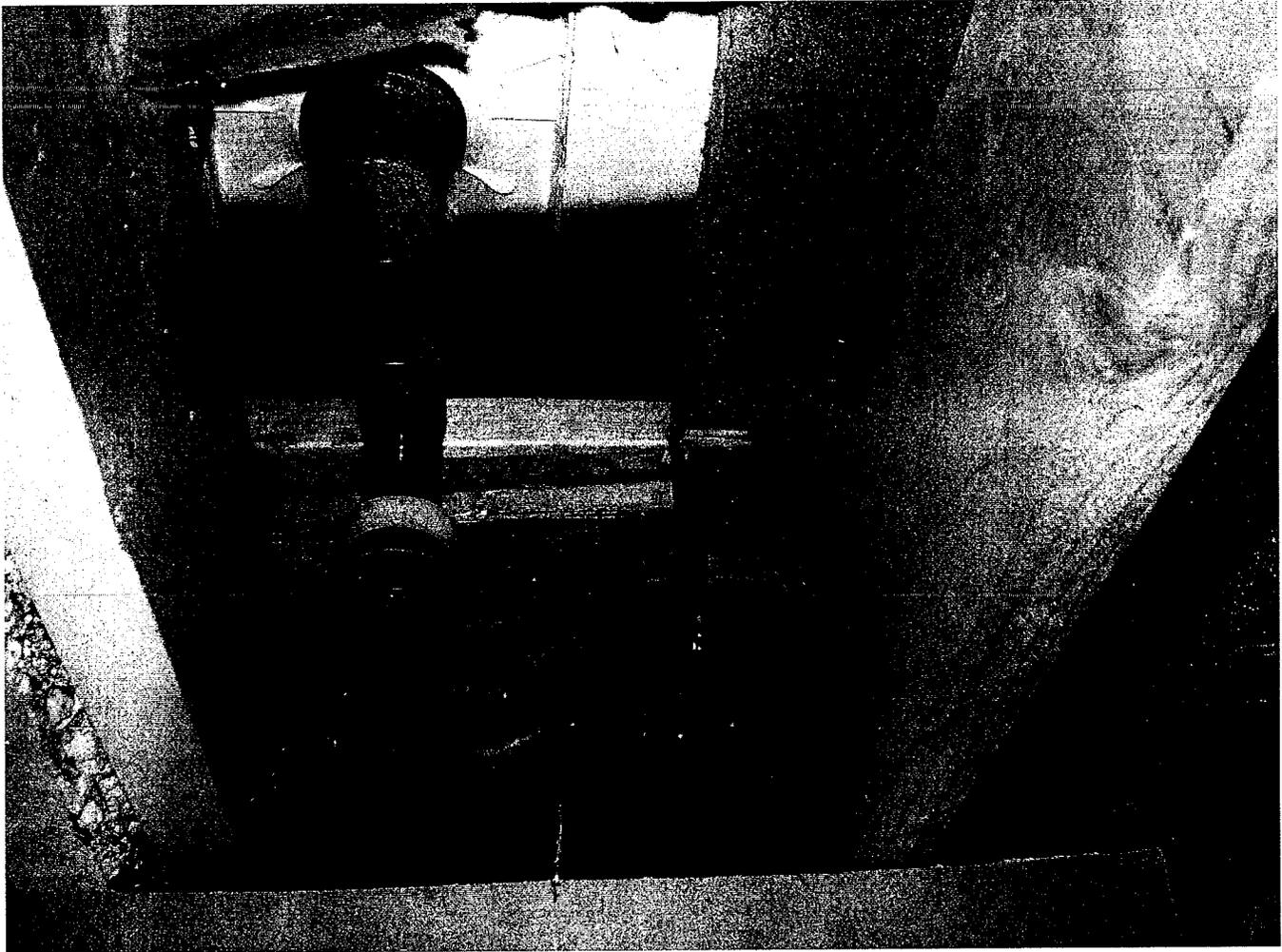
Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

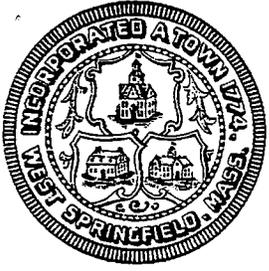
Phone: (413) 263-3059 Fax: (413) 263 3018

E-Mail: tlagodich@west-springfield.ma.us

Picture 2



Plumbing – electrical wiring openings through floors allows passage of fire and smoke – not allowed



TOWN OF WEST SPRINGFIELD

Building Department

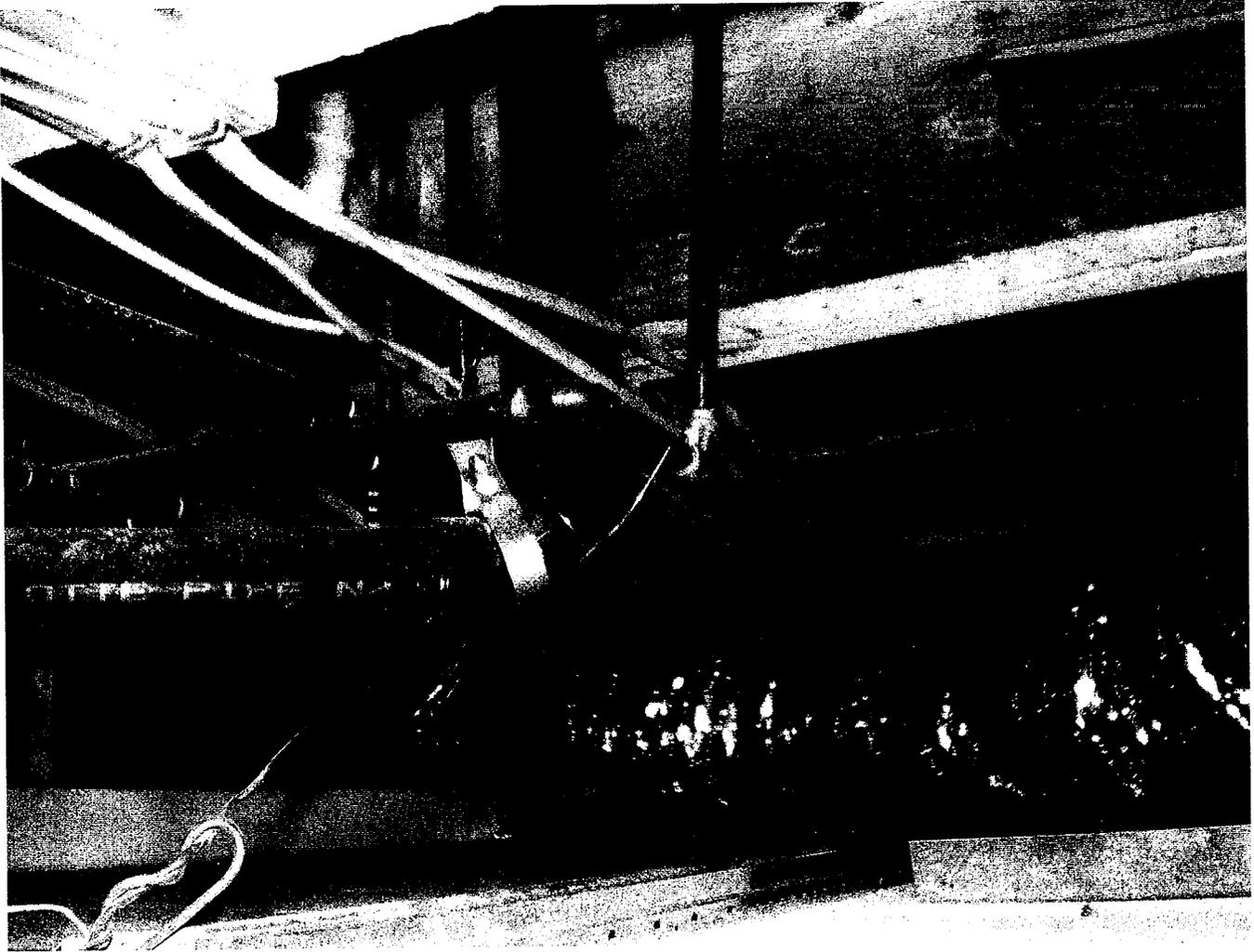
Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

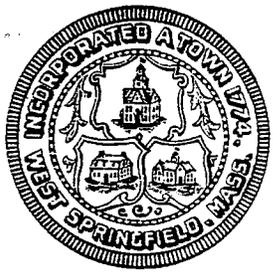
Phone: (413) 263-3059 Fax: (413) 263 3018

E-Mail: tlagodich@west-springfield.ma.us

Picture 3



Plumbing – electrical wiring openings through floors allows passage of fire and smoke – not allowed
Bare copper wire tied to plastic plumbing
Electrical wiring against copper water line.



TOWN OF WEST SPRINGFIELD

Building Department

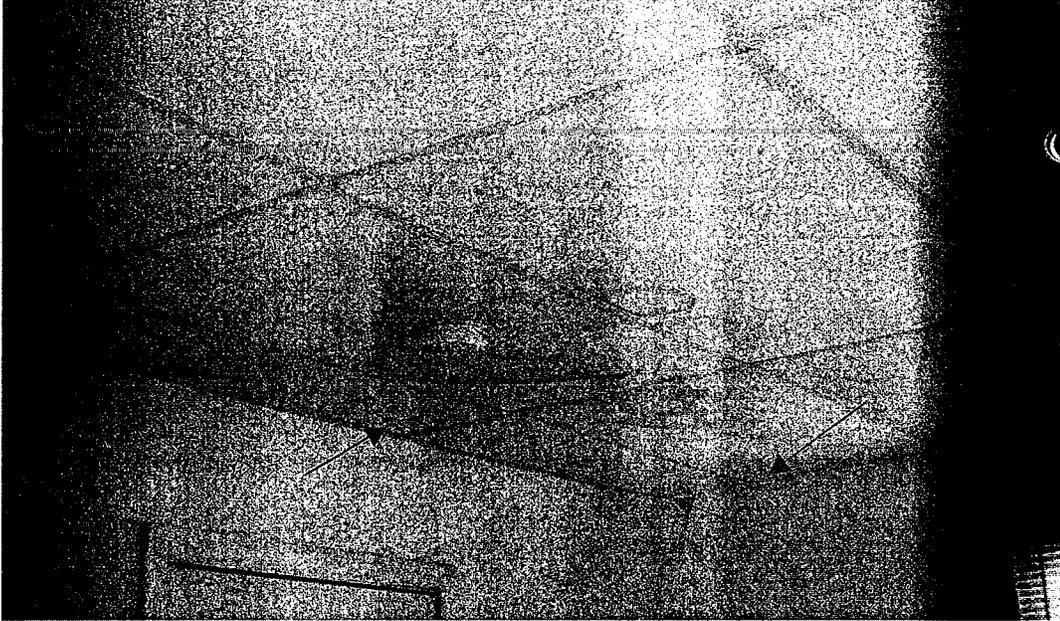
Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

Phone: (413) 263-3059 Fax: (413) 263 3018

E-Mail: tlagodich@west-springfield.ma.us

Picture 10

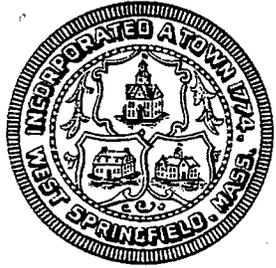


Even water leaks from the apartment above past through
Note the numerous gaps (allowing the passage of smoke, gases and frame to the floor above and concealed space.) in the tile to grid installation.

Picture 11

unprotected/rated ductwork/vents





TOWN OF WEST SPRINGFIELD

Building Department

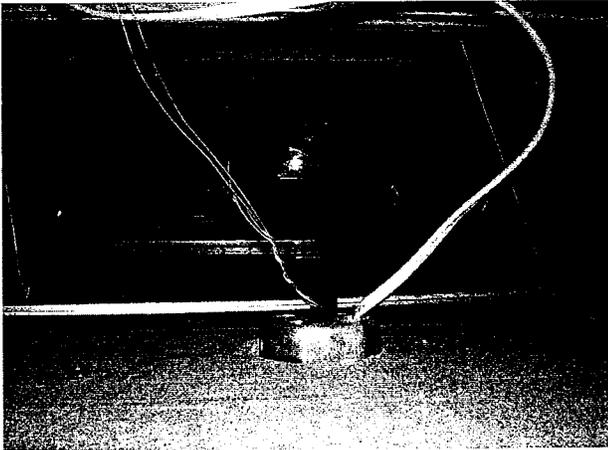
Code Enforcement

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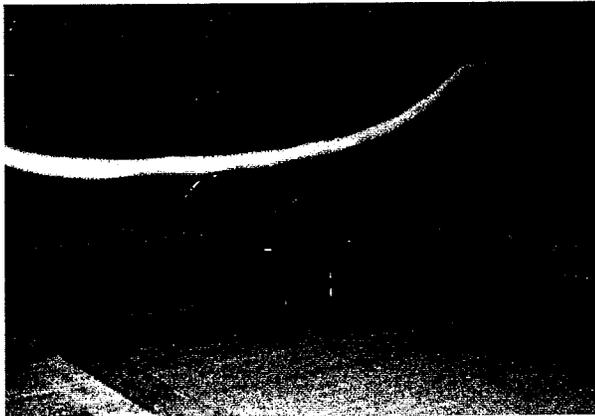
Picture 6



Picture 7



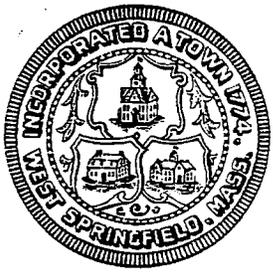
Picture 8



Picture 9



Numerous unprotected or un-rated penetrations (lights, smoke detectors, air vents/registers, etc) in required one hour floor-ceiling assembly.
Heating ductwork does not have the required fire dampers.



TOWN OF WEST SPRINGFIELD

Building Department

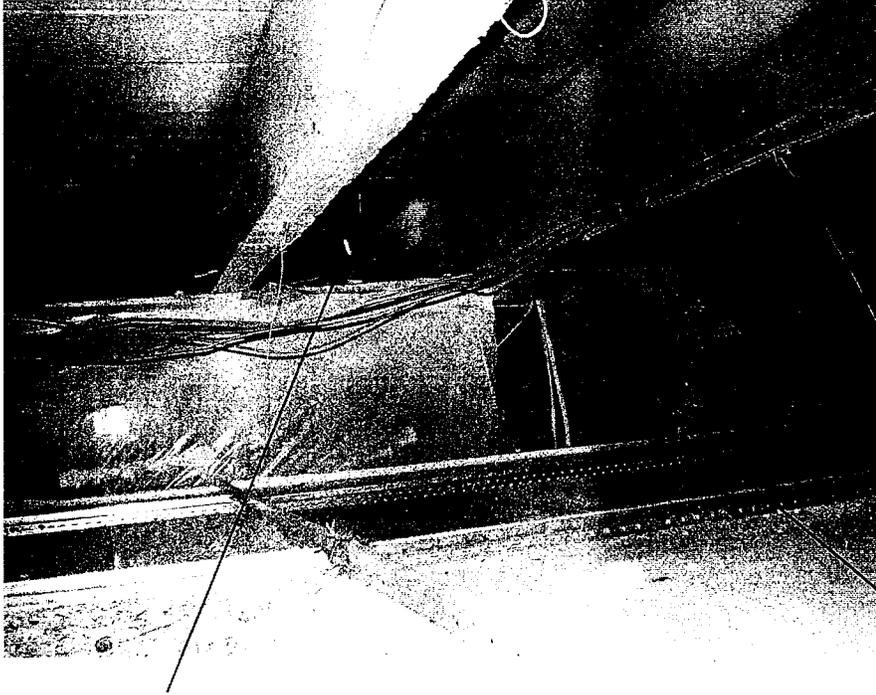
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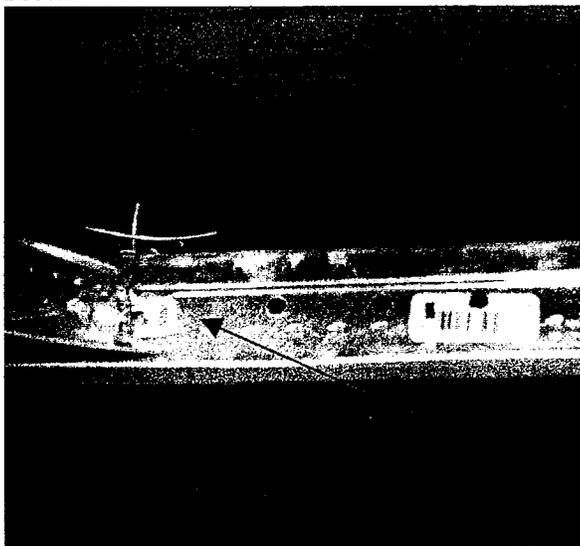
Picture 5



No fire stops in walls

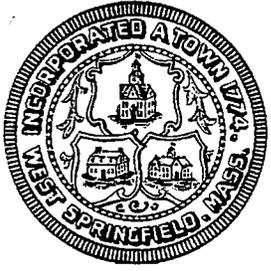
Open spaces between floors and tenant spaces and corridors on same floor allows passage of fire and smoke – not allowed.

Picture 5A



Grid not locked in

Poor installation of the grid system



TOWN OF WEST SPRINGFIELD

Building Department

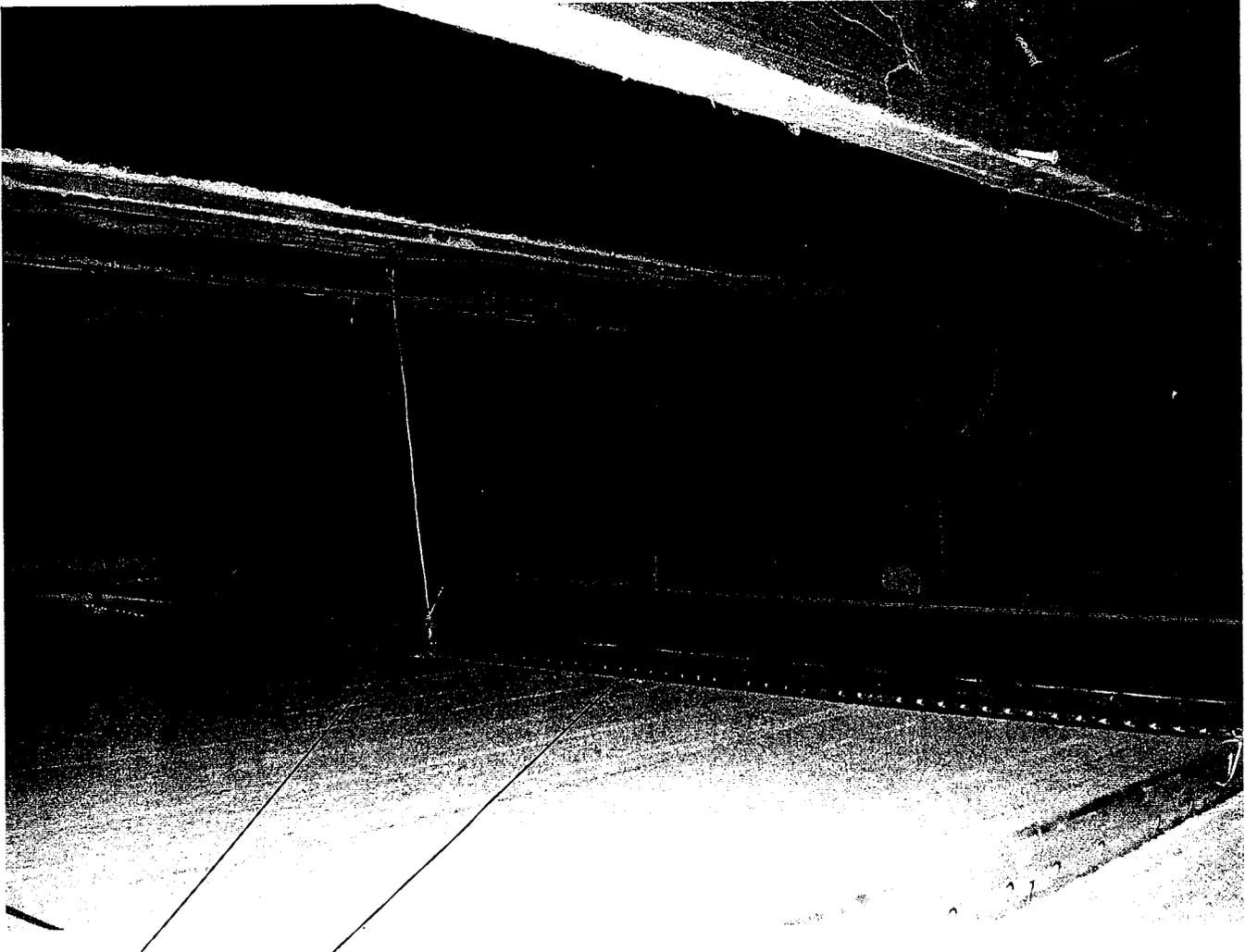
Code Enforcement

26 Central Street, Suite 4 West Springfield, MA 01089-2757

Phone: (413) 263-3059 Fax: (413) 263 3018

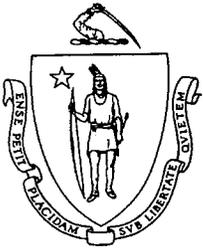
E-Mail: tlagodich@west-springfield.ma.us

Picture 4



Open spaces between floors and tenant spaces and corridors on same floor allows passage of fire and smoke – not allowed.

No fire stops



The Commonwealth of Massachusetts Department of Public Safety

One Ashburton Place, Room 1301
Boston, Massachusetts 02108-1618

Phone (617) 727-3200

Fax (617) 727-5792

TTY (617) 727-0019

www.mass.gov/dps

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Kevin M. Burke
Secretary

Thomas G. Gatzunis, P.E.
Commissioner

Docket #
05-468

MEMORANDUM

TO: Building Code Appeals Board
FROM: Todd M. Grossman- Deputy General Counsel
RE: 53 Wilbraham Avenue, Springfield, MA appeal (BCAB docket no. 05-468)
DATE: November 2, 2007

Per your request at the hearing on September 6, 2007, I have reviewed this matter to determine whether it would be appropriate for the Building Code Appeals Board to hear and decide this case. It is my opinion that this Board may hear this matter and render a decision. As you will recall, one of the parties indicated during the hearing that this matter was already in court. The Board was fittingly concerned that the matters before it may have already been decided by a court and that the Board possibly should not entertain the appeal.

Subsequent to the hearing, we requested and were provided with documentation from the Appellant relative to the court matter. I have attached those documents to this memorandum for your review. My review of those documents indicates that a complaint was filed in the Springfield Housing Court relative to the property that is subject of the present appeal- 53 Wilbraham Avenue, Springfield, MA. The issues raised before the Housing Court pertained principally to sanitary code violations. However, it does appear that the issue relative to fire resistance ratings (780 CMR 709.1) was raised at some point and a settlement agreement was entered into by the parties. The agreement, though, is of a general nature in which the appellant agreed to remedy the fire separation issue. As the case was settled, the court never rendered an interpretation of this, or any other, code provision. It appears as though the Appellant may have attempted to remedy the issues relative to section 709.1 and the building official found their efforts to be unsatisfactory. The Appellant filed the appeal with this Board seeking an interpretation of section 709.1 as it references table 602 as they believe they are in compliance with the Code and the settlement agreement.

Whereas the court has not offered an interpretation of the code section at issue, it would be appropriate for this Board to do so given the expertise the Board brings to the table. Otherwise, a Housing Court judge will be forced to interpret the provision to determine compliance with the settlement agreement. Assuming my understanding of the prior proceedings before the Housing Court is accurate; I suspect that the Housing Court judge would actually appreciate this Board's interpretive efforts in that regard. It is important to ensure, however, that the discussion at the hearing remain specific to the issue appealed (i.e. - an interpretation of 780 CMR 709.1 as it references table 602). As long as the discourse remains narrow to that issue, the Board is well within its authority under G.L. c.143, §100 to determine whether the property is in compliance with the Code without running afoul of the Housing Court's jurisdiction.

**** THIS DOCUMENT IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS LAW AS IT WAS PREPARED FOR PURPOSES OF PROVIDING LEGAL ADVICE AND IS ACCORDINGLY PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE****

Westlaw.

780 MA ADC 709.1

Page 1

780 CMR 709.1

**CODE OF MASSACHUSETTS
REGULATIONS
TITLE 780: STATE BOARD OF BUILDING
REGULATIONS AND STANDARDS
SIXTH EDITION
CHAPTER 7 FIRERESISTANT MATERIALS
AND CONSTRUCTION
709.0 FIRE SEPARATION ASSEMBLIES**
Current through October 19, 2007, Register
#1089

709.1 General

Fire separation assemblies installed for purposes of the enclosure of *exits*, floor openings, *shafts*, areas of refuge and for subdividing purposes shall be constructed of approved materials consistent with the limitations for the building type of construction and shall have not less than the fireresistance rating prescribed by Table 602.

Mass. Regs. Code tit. 780, § 709.1, 780 MA ADC 709.1

780 MA ADC 709.1
END OF DOCUMENT

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WARD & ASSOCIATES

Attorneys at Law

92 State Street, Suite 900
Boston, Massachusetts 02109-2018
(617) 248-9765
FAX (617) 742-8599
www.wardlawonline.com

October 23, 2007

Ms. Patricia Barry, Coordinator
State Building Code Appeals Board
One Ashburton Place
Boston, MA 02108-1618
To Fax No. 617-227-1754

Case No. 05-468
Property Address: 53 Wilbraham Avenue, Springfield, MA
Owners: Leah Daniels

Dear Ms. Barry:

Pursuant to your telephone call to send a copy of the complaint to your legal counsel, I attach the following.

The complaint began as a request for an emergency order by John Mills of the Springfield Fire Department on October 26, 2006. See Exhibit 1 - Petition for Emergency Order. When I went to the Housing Court clerk's office to obtain this document, this is what they gave me. I believe it is complete. Those issues have been signed off and we have not raised them before your Board.

The March 6, 2007 agreement of the parties is eight pages long, including an Exhibit A entitled "Violations" and an Exhibit B from the Code Enforcement Department, Building Division dated March 2, 2007. See Exhibit 2. This is the document from which our appeal to your Board springs.

As you can see from Exhibit 3 - June 15, 2007 report of the Associate City Solicitor, Lisa deSousa, to another of the city's attorney, Harry P. Carroll, at page 2, next to the last paragraph, the letter states "From the housing code standpoint, this property is in substantial compliance, and we can dismiss." This sign-off eliminated all of the alleged violations of the State Sanitary Code at Exhibit A.

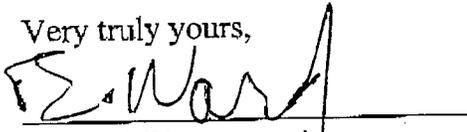
Exhibit 4 is another copy of the City of Springfield's reinspection report written by Inspector Bob Furey showing a shorter list than existed on March 6, 2007. The item at paragraph 5, "No fire separation between basement, first floor, second floor, third floor, 780 CMR Section 709-1 Table 602. Not complete." is one of the items we brought before the Board in this appeal. Please note that while the report was written on May 21, 2007, the City did not serve it on my client or me until June 25, 2007, well within the forty-five day filing period.

Exhibit 5 is the July 12, 2007 review by West Springfield inspector, Thomas Lagodich, in response to a request from the court which the parties initially wanted.¹

Lastly, at Exhibit 1, page 4, paragraph 12, although I was not Ms. Daniels' attorney at the time of the signing of this agreement, my client informs me that the language: "Both parties reserve any and all rights related to this matter." was intended to mean that she reserved her right to contest the issue which she has brought before your Board in her July 21, 2007 petition.

If you need anything further, please do not hesitate to contact this office. Thank you.

Very truly yours,



G. Emil Ward, Esquire

GEW:nw
attachments

c. Atty. Carroll, via first class mail
file

¹ Mr. Lagodich was originally supposed to file his report by July 9, 2007 having done the inspection on July 2, 2007, one week by agreement of the parties. However, as you can see from the date header, the report was not sent to any of the parties until July 13, 2007, almost a full work week beyond the due date. Since Ms. Daniels' time to remedy was cut short and since Mr. Lagodich was out on leave because of a death of a close family member, the undersigned filed this appeal within the forty-five day period seeking the guidance requested in the original appeal.

Exhibit 1

PLEASE PRINT

AFFIDAVIT

PLEASE PRINT

THIS IS A REQUEST FOR AN EMERGENCY ORDER

UNDER THE PAINS AND PENALTIES OF PERJURY I SWEAR AND AFFIRM THAT:

MY NAME IS John Mills, I Am The: Fire Inspector
Springfield Fire Department, My Business Address is:
605 Worthington Street Telephone # (413) 787-6410

I AM BRINGING THIS ACTION AGAINST: Leah Daniels who
resides at 12 Marcella Street City Boston Zip 02119 Phone (617) 445-0459

THIS ACTION RELATES TO PROPERTY LOCATED AT:
53 Wilbraham Avenue

(Explain the Defendant's relationship to the property): Owner Tenant Neighbor
 Visitor Other: _____

On October 5, 2006, The Following Occurred: (PRINT) I received a complaint
from Springfield Arson & Bomb Squad stating that the fire alarm system at the above
address was in alarm mode and silenced.

(OVER)

I HAVE ATTEMPTED TO RESOLVE THIS PROBLEM BY DOING THE FOLLOWING:

On October 6, 2006 I inspected the property and confirmed that the alarm system
was disabled. I contacted the owner via telephone and ordered her verbally to have the
alarm system repaired within 48 hrs. On October 10th. I again inspected the property
and the alarm system was still disabled. On October 11, 2006 I sent a certified
letter to 12 Marcella Street, Boston, MA ordering the owner to comply within
48 hrs. from that date. On October 17, 2006 Miss Daniels contacted me and said
she hired a company to repair the system and that she would contact me that day with a
starting date. Miss Daniels failed to contact me on that day. On October 26, 2006
I reinspected the property and found the system still disabled.

THEREFORE I AM ASKING THE COURT TO: Order Miss Daniels to have the system
repaired immediately and fine Miss Daniels \$100.00 for failing to comply with the
order from the head of the fire department.



 SIGNED

10-26-06

 DATE

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 06 TR - 929

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

LEAH DANIELS (owner),

Defendant(s)

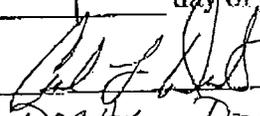
PETITION TO ENFORCE THE STATE SANITARY CODE AND/OR REVISED
ORDINANCES OF THE CITY OF SPRINGFIELD
(Massachusetts General Laws chapter 111, section 127 A-H
and/or
Revised Ordinances of the City of Springfield, 1986,
§7.16.120; § 7.16.130; and/or §12.16.030 as amended)

1. The Address of the subject property is 53 Wilbraham Avenue, Springfield, Massachusetts.
2. The Plaintiff is the authorized agent of a municipal corporation which has a principal place of business at 36 Court Street, Hampden County, Springfield, Massachusetts.
3. The Defendant LEAH DANIELS is the owner of the property which is within the geographic area served by the Court. The Defendants' last address and usual place of service is 12 Marcella Street, Boston, Massachusetts 02119.
4. On or about October 6, 2006, the Plaintiff observed conditions at the subject property, which are in violation of Chapter II of the State Sanitary Code, "Minimum Standards of Fitness for Human Habitation", or Standards of the Board of Health and/or in violation of the Revised Ordinances of the City of Springfield, 1986, §7.16.120 as amended with regard to; § 7.16.130 with regard to an unregistered motor vehicle; and/or §12.16.030 with regard numbering of buildings. Reference is made to Exhibit A.
5. These conditions are described in Exhibit A, which is attached to this petition. The conditions described may endanger or materially impair the health or well being of residents of the area surrounding the subject property.
6. On or about October 6, 2006, the Plaintiff contacted Defendant via telephone. This telephone call ordered the restoration and maintenance of the subject property pursuant to the standards required by the State Sanitary Code and/or City Ordinances. Specifically, the Defendant was ordered to repair/enable the disabled fire alarm system

VERIFICATION OF COMPLAINT

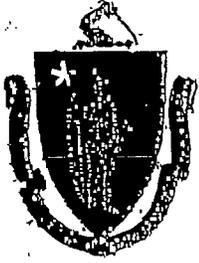
I do affirm and state that I have read the foregoing Complaint and that the facts contained therein are true and accurate to the best of my knowledge and belief.

Signed under the pains and penalties of perjury this 15th day of Nov. 2006.



Deputy Director (Housing)
Code Enforcement Inspector
Code Enforcement

Exhibit 2



COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT
HOUSING COURT DEPARTMENT
WESTERN DIVISION
37 ELM STREET - P.O. BOX 559
SPRINGFIELD, MA 01102-0559
TELEPHONE (413) 748-7838
FAX (413) 782-4607

WILLIAM H. ABRASHKIN
FIRST JUSTICE

DINA E. FEIN
ASSOCIATE JUSTICE

CURTIS L. SHARD
CLERK MAGISTRATE

ROBERT G. FIELDS
FIRST ASSISTANT CLERK MAGISTRATE

KAREN-ANN HUNTON
ASSISTANT CLERK MAGISTRATE

Casc No. 06-TR- 929

Date 3/6 2007

S.H.D.
Plaintiff

Leah Daniels
Defendant

RE: Premises: 53 Wilbraham Ave 2L Springfield, MA.

AGREEMENT OF THE PARTIES

THE PARTIES AGREE TO THE FOLLOWING AS RESOLUTION OF THIS CASE

1) Both parties acknowledge that this agreement will become the basis of a court order and may be enforceable through a contempt action.

2) The Defendant shall remove any litter rubbish and/or debris from the above property and continue to keep it clear of such.
4/13/07
OK WITH

3) The Defendant shall correct violations numbered 1-3 in the attached Exhibit A forthwith and in any event no later than 11:00AM April 2, 2007
4/13/07
NOT DONE

4) The Defendant shall correct the remaining
4/13/07
NOT DONE

①

Violations listed in Exhibit A by

11:00am 4/2/07

5) The Defendant shall comply with paragraph 2 of this agreement by 11:00 AM 4/2/07.

6) The Defendant shall correct all violations listed in Exhibit B forthwith and in

any event no later than 11:00 AM 4/2/07 except items 3, 5, 6, 7 and 9 in Exhibit B which shall be corrected on or before 11:00 am on June 2, 2007 provided that items 1, 2, 8 and 10 are corrected by 11:00 am on 6/2/07.

7) The Defendant shall pay the city \$1358.56 (\$1229.80 per the 2/27/07 court order and

the parties are to appear in court on _____ at _____ o'clock for review on compliance with this agreement. * FAILURE of the Plaintiff to appear for this review may result in the Dismissal of this case. **FAILURE of the Defendant to appear for this review May Result in the Issuance of an Eviction Order. A CAELAS.

EITHER PARTY alleges that the other party has failed to comply with the terms and conditions of this Agreement, s/he may schedule a court hearing after serving a seven business days written notice to the other party and immediately filing a copy of that notice with the court. The seven day period begins when the other side receives notice. Once Approved By The Judge, This Agreement Becomes A Court Order And Both Parties Are Legally Required To Follow It. If questions arise, please direct them to the mediator. I Understand That I Have a Right to Trial Before a Judge, but Instead I Choose to Sign this Agreement.

Landlord/date

Tenant/date

PRINT NAME

PRINT NAME

Telephone

Telephone

Plaintiff's Attorney

Defendant's Attorney

Mediator

Clerk-Magistrate / Asst. Clerk-Magistrate

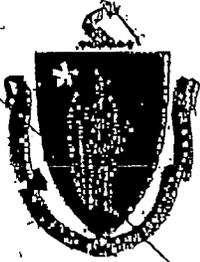
William H. Abrashkin, First Justice

Dina E. Feln, Associate Justice

10.6 5/22/01 (cls)

() Copies were given to the parties

(2)



COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT
HOUSING COURT DEPARTMENT
WESTERN DIVISION
37 ELM STREET - P.O. BOX 559
SPRINGFIELD, MA 01102-0559
TELEPHONE (413) 748-7838
FAX (413) 732-4607

WILLIAM H. ABRASHKIN
FIRST JUSTICE

DINA E. FEIN
ASSOCIATE JUSTICE

CURTIS L. SHARD
CLERK MAGISTRATE

ROBERT G. FIELDS
FIRST ASSISTANT CLERK MAGISTRATE

KAREN-ANN HUNTOON
ASSISTANT CLERK MAGISTRATE

Case No. 06-TR-_____

Date _____ 2006

S.H.D

Plaintiff

v.

Defendant

RE: Premises: _____ Springfield, MA.

AGREEMENT OF THE PARTIES

THE PARTIES AGREE TO THE FOLLOWING AS RESOLUTION OF THIS CASE

1) Both parties acknowledge that this agreement will become the basis of a court order and may be enforceable through a contempt action.

\$128.76 for cost of serving the 2/27/09 court order)
by 9:00 A.M. 4/3/06.

8) The Defendant shall pay a fine of \$100.00 per day for every day the Defendant fails to ~~comply~~ Comply with any of the following paragraphs: 2, 3, 4, 5, or 6, of this agreement.

9) The Defendant shall fax the City SFD a copy of ~~the~~ a 1 year pre paid monitoring contract for the building alarm system to the following number (413) 787-6452

NOT DONE

⑤

4/7/07
ok

10) The Defendant shall not allow anyone to occupy the 1st floor left dwelling unit in the above dwelling until the City ~~inspects~~ ~~inspects~~ inspects and issues a Certificate of occupancy.

11) Failure to comply with paragraph 10 (ten) of this agreement shall result in a fine of \$300.00 per day for every day the

unit is occupied. Failure to comply with paragraph 6 of this Agreement ^{upon} ^{result} ⁱⁿ the maximum daily fines for each violation being imposed. Both parties reserve any and all rights related to this matter.

Both parties are to appear in court on _____ at _____ o'clock for review on compliance with this agreement. * **FAILURE** of the Plaintiff to appear for this review **will result in the Dismissal of this case.** * **FAILURE** of the Defendant to appear for this review **will result in the issuance of an Eviction Order.** A CAELAS.

EITHER PARTY alleges that the other party has failed to comply with the terms and conditions of this Agreement, s/he may schedule a court hearing after serving a seven business days written notice to the other party and immediately filing a copy of that notice with the court. The seven day period begins when the other side receives notice. Once Approved By The Judge, This Agreement Becomes A Court Order And Both Parties Are Legally Required To Follow It. If questions arise, please direct them to the mediator. I Understand That I Have a Right to Trial Before a Judge, but Instead I Choose to Sign this Agreement.

Landlord/date

Tenant/date

PRINT NAME

PRINT NAME

Telephone

Telephone

Plaintiff's Attorney

Defendant's Attorney

[Signature]
Mediator

Clerk-Magistrate / Asst. Clerk-Magistrate

William H. Abrashkin, First Justice

Dina E. Feln, Associate Justice

3.6. 5/22/01 (cls)

() Copies were given to the parties

[Handwritten mark]

(4)



COMMONWEALTH OF MASSACHUSETTS
 THE TRIAL COURT
 HOUSING COURT DEPARTMENT
 WESTERN DIVISION
 37 ELM STREET - P.O. BOX 559
 SPRINGFIELD, MA 01102-0559
 TELEPHONE (413) 748-7838
 FAX (413) 732-4807

WILLIAM H. ABRASHKIN
 FIRST JUSTICE
 DINA E. FEIN
 ASSOCIATE JUSTICE

ROBERT G. FIELDS
 CLERK MAGISTRATE
 KEVIN R. BYRNE, SR.
 CHIEF HOUSING SPECIALIST

Case No. _____ Date _____
 _____ v. _____
 LANDLORD/PLAINTIFF TENANT/DEFENDANT

AGREEMENT OF THE PARTIES

THE PARTIES AGREE TO THE FOLLOWING AS A RESOLUTION OF THIS CASE

- 3) ^{NOT DONE} The defendant shall provide the City and its Inspectors access to the premises, ~~and~~ all its units and common areas on 4/2/07 between 11:00 am - 2:00 pm.
- 4) It is the defendant's duty to give the tenants proper notice. ?
- 5) The defendant may apply for an extension of the temporary certificate of occupancy on 4/2/07, provided defendant has completed all work due to be completed, as referenced in paragraph 6 of this agreement, by the date due set forth therein.

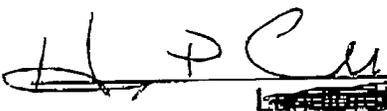
OVER

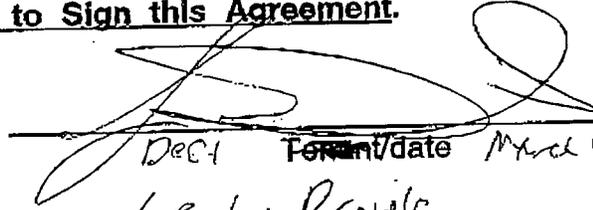
5

3) If the Defendant fails to complete all work due to be completed by 4/2/07 as required by paragraph 6 of this Agreement, ~~the~~ Defendant ~~shall~~ be fined the maximum ^{daily} amounts ^(for each violation) starting 4/2/07 until the work is approved by the building Department, unless ~~excused~~ ^(is excused) for timely compliance or for just cause found by the court.

The parties are to appear in court on 4/3/07 at 9:00 am o'clock for review on compliance with this agreement. * **FAILURE** of the **Plaintiff** to appear for this review **May Result in the Dismissal of this case.** ****FAILURE** of the **Defendant** to appear for this review **May Result in the Issuance of an Eviction Order or a Capias.**

IF EITHER PARTY alleges that the other party has failed to comply with the terms and conditions of this Agreement, s/he may schedule a court hearing after serving a seven business days written notice to the other party and immediately filing a copy of that notice with the court. The seven day period begins when the other side receives notice. **Once Approved By The Judge, This Agreement Becomes A Court Order And Both Parties Are Legally Required To Follow It.** If questions arise, please direct them to the mediator. **I Understand That I Have a Right to a Trial Before a Judge, but Instead I Choose to Sign this Agreement.**


 Plaintiff

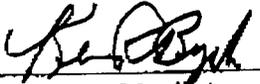

 Dec 1 Forant/date March 6, 2007
 Leah Davis

Harry P. Carroll, Esq.
 PRINT NAME
 Senior Legal Counsel
 Springfield Law Department

417-370-1900
 Telephone

City of Springfield
 Telephone
 787-5085

John S. Banz, P.C.
 392760
 Defendant's Attorney 781-5400

Plaintiff's Attorney

 Mediator

52 mlb at
 SPED. MAIL # 7/6/07
 Clerk-Magistrate / Asst. Clerk-Magistrate

William H. Abrashkin, First Justice

Dina E. Fein, Associate Justice

agree.6 5/22/01 (cls)

(4) Copies were given to the parties



6

DATE 9-21-06

FROM: DEPARTMENT OF CODE ENFORCEMENT
HOUSING DIVISION
36 COURT STREET
SPRINGFIELD, MA 01103

EXHIBIT A

RE: 53 Wilbraham Ave., 2-J, Occupants-~~Gail Smith & Robert McAuley~~

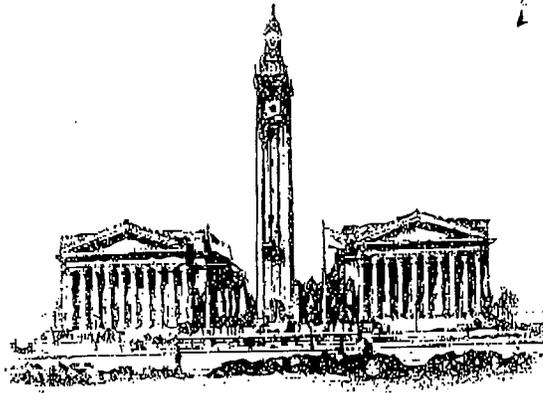
VIOLATIONS

EXTERIOR	Front Door	CMR .351	Exposed wires (2-5) ①
	"	CMR *.480(c)	Automatic lock on main entry door missing - ② defective (2-45)
	Other	CMR *.481	Posting of name of owner (see attached) (2-48) ③
KITCHEN	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Doors	CMR .552	Screen door missing (5-4)
	"	CMR .501(b)	Doors not weathertight (4-35)
	Floor	CMR .500	Tiles broken - missing (4-4)
	"	CMR .504(a)	Floors are not nonabsorbent material (4-45)
BATHROOM	Floor	CMR .500	Tiles broken - missing (4-4)
	"	CMR .504(a)	Floors are not nonabsorbent material (4-45)
REAR UTILITY ROOM	Windows	CMR .551	Screens for windows missing (5-2)
FRONT ROOM	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Windows	CMR .551	Screens for windows missing (5-2)
2 ND ROOM	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Other	CMR .351	Intercom system not working (2-28)

If Defendant chooses not to repair this violation he must properly secure and cover any exposed wires

(Handwritten mark)

Exhibit 15



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

In Reply Refer To:
53 Wilbraham Avenue

CODE ENFORCEMENT DEPARTMENT**BUILDING DIVISION

March 2, 2007

Leah Daniels
12 Marcella Street
Roxbury, MA 02119

We acknowledge the receipt of your letter of request for a Temporary Certificate of Occupancy in regards to Permit #0401168 issued September 2, 2004 to do a complete renovation of a multi-residence building.

According to our records all the work has been completed except for:

- 1) No emergency egress lighting on second floor hallway and third floor stairwell front stairs. No emergency egress lighting rear stairwell. 780 CMR Section 1024.
- 2) Third floor apartment rear exit handrail is short. 780 CMR Section 1022.2.4.
- 3) Front exterior stairs are not dimensionally uniform. 780 CMR Section 1014.6.2.
- 4) Interior basement stairs have some broken treads. 780 CMR Section 103.1, 103.2.
- 5) No fire separation between basement, first floor, second floor and third floor. 780 CMR Section 709-1 Table 602.
- 6) No insulation between basement and first floor. 780 CMR Section 1304.1.
- 7) No insulation on supply ductwork in basement. 780 CMR Section 1305.2.8.
- 8) No dryer vents installed. 780 CMR Section 3618.1. *ND*
- 9) Seal chimney openings. 780 CMR Section 103.1, 103.2.
- 10) Install mechanical fasteners on new columns in basement. 780 CMR 2305.6

We do therefore issue the Temporary Certificate to occupy the dwelling at 53 Wilbraham Avenue.

This Temporary Certificate of Occupancy will expire on April 2, 2007.

When all the work has been completed, we will then issue the Permanent Certificate of Occupancy.

Sincerely,

Steven T. Desilets
Code Enforcement Commissioner

Exhibit 3

OFFICE OF HOUSING &
NEIGHBORHOOD SERVICES
CODE ENFORCEMENT
1600 East Columbus Avenue
Springfield, MA 01103
Tel. (413) 886-5206
Fax (413) 787-6515



THE CITY OF
SPRINGFIELD, MASSACHUSETTS



June 15, 2007

Harry Caroll, Esq.
City of Springfield
Legal Department

Exhibit

Re: S.H.D. -v- Leah Daniels
Docket # 06-TR-00035
53 Wilbraham Avenue, Springfield, Massachusetts

RECEIVED
JUN 15 2007
CITY OF SPRINGFIELD
Law Department

Dear Mr. Caroll:

I am in receipt of your written correspondence requesting important information from the Code Enforcement Department regarding the ongoing litigation in this matter. Per your instructions, I have attached the following for your review:

- Exhibit A, detailing the list of housing code violations at the subject property.
- Inspector reports indicating the status of those violations as of March 2, 2007.
- Inspector reports indicating the status of those violations as of April 2, 2007.
- Inspector pictures showing the status of those violations as of June 14, 2007.
- An affidavit from Deputy Director Carl Dietz, which attempts to summarize the conditions.

Please be advised my office has been in contact with the Building Department on this matter, and that that department will be providing their information on this property to you separately.

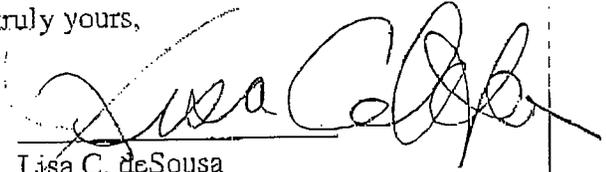
After reviewing all inspector reports and conferring with Deputy Director Carl Dietz, it appears that only a litter violation for the basement of this property (from September of 2006) is still outstanding. Unfortunately, inspector reports do not indicate the exact number of days from April 2, 2007 to June 2, 2007 that the violations listed in

Exhibit A were present. As such, I am unable to provide you with such information;

From the housing code standpoint, this property is in substantial compliance, and we can dismiss.

Thank you for your time and attention. Please feel free to contact my office with any questions or concerns regarding this matter.

Very truly yours,



Lisa C. deSousa
Associate City Solicitor

cc. Nathan P. LaVallee

21-06

DEPARTMENT OF CODE ENFORCEMENT
HOUSING DIVISION
36 COURT STREET
SPRINGFIELD, MA 01103

EXHIBIT A

E: 53 Wilbraham Ave., 2-L Occupants - ~~Gail Smith & Robert McAtuley~~

VIOLATIONS

EXTERIOR	Front Door	CMR .351	Exposed wires (2-5) ①
	"	- CMR *.480(c)	Automatic lock on main entry door missing - defective (2-45) ②
<hr/>			
	Other	CMR *.481	Posting of name of owner (see attached) (2-48) ③
KITCHEN	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Doors	CMR .552	Screen door missing (5-4)
	"	CMR .501(b)	Doors not weathertight (4-35)
	Floor	CMR .500	Tiles broken - missing (4-4)
	"	CMR .504(a)	Floors are not nonabsorbent material (4-45)
BATHROOM	Floor	CMR .500	Tiles broken - missing (4-4)
	"	CMR .504(a)	Floors are not nonabsorbent material (4-45)
BAR UTILITY ROOM	Windows	CMR .551	Screens for windows missing (5-2)
LIVING ROOM	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Windows	CMR .551	Screens for windows missing (5-2)
BEDROOM	Ceiling	CMR .500	Smoke and/or water damage (4-32)
	Other	CMR .351	Intercom system not working (2-28)

If Defendant chooses not to repair this violation she must properly secure ~~the~~ and cover any exposed wires

Exhibit 4



Report

CITY OF SPRINGFIELD
INSPECTOR'S SPECIAL REPORT

DATE 5-21-07

ADDRESS IN QUESTION: 53 Wilburham Av.

OWNERS NAME: Leah Daniels
OWNERS ADDRESS: 12 Marcellin St
Roxbury MA. 02119.

ZONE: Res B TYPE: SB.
BLOCK PLAN# 817

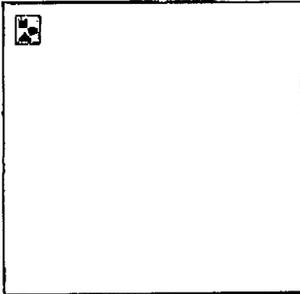
A reinspection of 53 Wilburham Av. on 5-18-07 recorded the following:

- 1. No emergency egress lighting on second floor hallway and third floor stairwell front stairs. No emergency egress lighting near stairwell 780 CMR. Section 1021 - COMPLETE -
- 2. Third floor rear exit horizontal is slant, 780 CMR Section 1022.2.4 - Complete.
- 3. Front exterior stairs are not dimensionally uniform, 780 CMR Section 1014.6.2 Not Complete.
- 4. Interior Basements stairs have some Badly Treads, 780 CMR Section 103.1, 103.2. Complete.
- * 5. No Fire Separation between basements, first floor, second floor, third floor. 780 CMR Section 709-1 Table 602, NOT complete.
- 6. No insulation between basements and first floor. 780 CMR. Section 1304.1 No Complete.
- 7. No insulation on supply ductwork in basements. 780 CMR Section 1305.2.8 Not Complete.
- 8. No Drip caps installed. 780 CMR Section 3618.1.1 NOT complete.
- 9. Seal chimney openings. 780 CMR, 103.1, 103.2. Complete.
- * 10. INSURANCE Mechanical Fasteners on New columns in basements. 780 CMR 2305.2. NOT complete.

INSPECTOR: [Signature]

Exhibit 5

Subj: **Report 53 Wilbraham Ave Spfld**
Date: 7/13/2007 11:31:53 A.M. Eastern Daylight Time
From: tlagodich@west-springfield.ma.us
To: GEmilW@aol.com



**TOWN OF WEST
SPRINGFIELD
Building Department
Code Enforcement**

26 Central Street, Suite 4 West Springfield, MA 01089-2757
Phone: (413) 263-3059 Fax: (413) 263 3018
E-Mail: tlagodich@west-springfield.ma.us

July 12, 2007

Mr. Kevin Byrne
Housing Court
37 ElmSt
Springfield, MA 01102

Re: Inspection report on 53 Wilbraham Ave, Springfield.

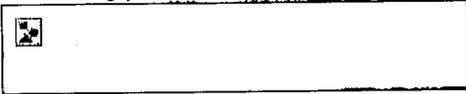
Per the Court's request, I inspected the multi-family residence (5 dwelling units) located at 53 Wilbraham Ave in Springfield. Ms. Leah Daniels, the owner, was present along with two Springfield Inspectors. Below I reviewed the five issues that were being questioned:

- 1. Front stairs are not dimensionally uniform. 780 CMR 1014.6.2**
Corrected
- 2. No fire separation between basement, first floor, second floor and third floor. 780 CMR Section 709-1 Table 602**
Must be corrected -- Suspended ceilings (even those with a fire resistive rating) can be used as additional protection but do not qualify on their own as a required floor/ceiling fire separation assembly between tenant spaces. A proper fire separation assembly must be installed between all floors (typically sheetrock).
- 3. No insulation between basement and first floor. 780 CMR Section 1304.1**
Partially done -- some areas missing insulation must be completed to comply with the Building Envelope Requirements
- 4. No insulation on the supply ductwork in basement. 780 CMR 1305.2.8**
Must be corrected - must be completed to comply with the Building Envelope Requirements (minimum R-5). (An alternative is to install insulation all exterior foundation walls).
- 5. No dryer vents installed (abandoned wire). 780 CMR Section 3618.1**
Must be corrected -- The exposed wire for what appears to be a future dryer installation must be removed or end in an appropriate electrical box. (I am not familiar with Springfield's Local

requirements for dryer connections.)

Please note that I verified my finding with the State Building Inspector, Gordon Bailey, to ensure accuracy in this report. Please feel free to call if you have any questions.

Thanking you in advance for your attention to this matter,



Thomas Lagodich
Building Inspector/Enforcement Officer

cc: Spfld Building Dept, Atty E. Ward

Official use only

Date of notification 7/12/07	Re-inspected	File - Wilbraham Rd 53 court review Spfld 7-07.doc
Compliance Yes <input type="checkbox"/> No <input type="checkbox"/>	Trial Court Date	Docket #

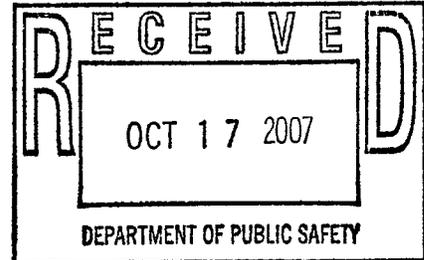
WARD & ASSOCIATES

Attorneys at Law

92 State Street, Suite 900
Boston, Massachusetts 02109-2018
(617) 248-9765
FAX (617) 742-8599
www.wardlawonline.com

October 16, 2007

Ms. Patricia Barry, Coordinator
State Building Code Appeals Board
One Ashburton Place
Boston, MA 02108-1618



Property Address: 53 Wilbraham Avenue, Springfield, MA
Owners: Leah Daniels

Dear Ms. Barry:

Please be advised that this office represents Ms. Leah Daniels in this appeal. Enclosed you will find Appellant's Request for a Rehearing. In light of the fact that the basis for the request is the fact that this Board has jurisdiction over most matters which come before it, regardless of whether or not the matter has gone to court, I have included a legal argument near the beginning of the Request.

Your Board stated to me that none of them were attorneys when I was before them on another matter. Therefore, I ask that you forward this request to the Board's legal counsel for his/her review of the legal arguments that the Board in fact has the power to preempt the court in most cases, especially one such as this where issues previously raised by the City involve so intricately judgments very much within the expertise of the Board.

Please inform me when your counsel has received this package so that I may contact him/her and further discuss the issue of Primary Jurisdiction or Prior Resort which gives your Board the right to review cases before the courts do.

I found no regulations for requesting a rehearing. Therefore, I have used the form I thought most appropriate. If there is another form or procedure which we must follow, please so inform me and we will re-submit this Request in that form.

Pursuant to your regulations, I have enclosed an original and 3 copies of the Request and a CD containing the Request in WordPerfect.

Please schedule a hearing on this matter at the earliest opportunity after your counsel has reviewed the matter.

Thank you.

Very truly yours,



G. Emil Ward, Esquire

c:

Harry P. Carroll, Esquire
client
file

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

**STATE BUILDING CODE APPEALS BOARD
Docket No.
Property Address: 53 Wilbraham Avenue,
Springfield, Massachusetts**

REQUEST OF APPELLANT LEAH DANIELS FOR REHEARING

NOW COMES appellant herein, Leah Daniels, and requests that the Board grant a rehearing of this matter on the issues previously outlined in Ms. Daniels' Application for Appeal dated July 24, 2007 for the reasons described below.

Specifically, Ms. Daniels asks for a rehearing because:

1. This Board has the legal power to and must take jurisdiction of the issues set out in this appeal under the doctrine of Primary Jurisdiction or Prior resort, despite the fact that the matter has been in court: The Board further has the power to issue the orders requested in the July 21, 2007 appeal application.

On July 21, 2007, Ms. Daniels took an appeal to the State Building Code Appeals Board seeking an interpretation of the July 12, 2007 findings of Inspector Lagodich, and seeking interpretation of alleged violation number 2, no fire separation between basement, first floor, second floor and third floor under 780 CMR, § 709-1, Table 602 and seeking similar relief with respect to Inspector Bob Feury's findings dated May 21, 2007, not served on Ms. Daniels until it was sent to her counsel on or about June 25, 2007. See attached.

At the hearing which took place on September 6, 2007, after discussing some of the issues presented in that appeal, the Board wrongly abstained from making a decision, taking the view that because the matter was “in court” that the Board was ousted of jurisdiction. In fact, the opposite is the case. See application dated July 21, 2007 and July 12, 2007 inspector’s findings.

ARGUMENT

Plaintiff makes this request based on the Doctrine of Primary Jurisdiction or Prior Resort as it has come to be known. *J & J Enterprises, Inc. v. Martignetti*, 369 Mass. 530 (1976). The SJC recognized that where an administrative agency and a court both share a claim to jurisdiction, that in order to promote the administrative scheme of government the court should stay its proceedings and defer to the administrative agency so that the agency may make its decision first. Such decisions then are, of course, subject under Chapter 30A, the Administrative Procedure Act, to judicial review thereafter. In *Murphy v. Administrator of the Division of Personnel Administration*, 377 Mass. 217, 220 (1979), the court stated, in distinguishing between the exhaustion of administrative remedies doctrine and the doctrine of Primary Jurisdiction: “ ... we observe that the rationale underlying primary jurisdiction is in substance much the same as that which supports (administrative) exhaustion: the doctrine of primary jurisdiction, like exhaustion, ‘is

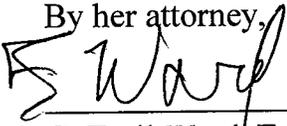
concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties.’ Thus, the doctrine is particularly applicable when an action raises a question of the validity of an agency practice ... or when the issue in litigation involves ‘technical questions of fact uniquely within the expertise and experience of an agency.’ ...” *Murphy, Id.*

Further, “where the Legislature has provided an administrative process for the resolution of disputes in the first instance, the courts must respect that choice.” *Puorro v. Commonwealth*, 59 Mass. App. Ct. 61, 64 (2003). See also *Massachusetts Correction Officers of Federated Union v. County of Bristol*, 64 Mass. App. Ct. 461, 467, n.9 (2005).

The Board continued the matter primarily because they felt they were ousted of jurisdiction. But, they wanted a report date given that the parties felt that they might be able to resolve the issues amongst themselves. No date has been set as yet. Ms. Daniels strongly believes that the law herein cited requires that the court must abstain from taking further action at this point and that the Board must take jurisdiction and must decide the issues on the merits of this matter. In the meantime, Ms. Daniels has made all other corrections except that there remains an issue as to complete compliance with the fire separation Code requirements, although her architect has opined that on the floors where the Armstrong Fireguard tile and framing structure are present, she is in compliance with the Code.

WHEREFORE, Ms. Daniels moves this Board to take jurisdiction and grant her a rehearing.

Date: October 16, 2007

Leah Daniels
Appellant
By her attorney,


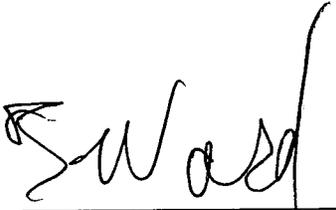
G. Emil Ward, Esquire
Ward & Associates
92 State St., Suite 900
Boston, MA 02109
(617) 248-9765
BBO# 515760

Certificate of Service

I, G. Emil Ward hereby certify that on this day I served a copy of Request of Appellant Leah Daniels for Rehearing in-hand on October 17, 2007 to the following:

Harry P. Carroll, Esquire
City of Springfield
Law Department
36 Court Street, Room 210
Springfield MA 01103

Date: October 16, 2007



G. Emil Ward, Esquire



Permit

CITY OF SPRINGFIELD
INSPECTOR'S SPECIAL REPORT

DATE 5-21-07

ADDRESS IN QUESTION: 53 Willbraham Av.

OWNERS NAME: Leah Daniels
OWNERS ADDRESS: 12 Macella St

ZONE: Res B TYPE: SB,

Roxbury MA. 02119.

BLOCK PLAN# 817

A reinspection of 53 Willbraham Av. on 5-18-07 revealed the following:

1. No emergency egress lighting on second floor hallway and third floor stairwell from stairs. No emergency egress egress near stairwell 780 CMR, Section 1021 - COMPLETE.
2. Third floor rear exit horizontal is slant, 780 CMR Section 1022.2.4 - complete.
3. Front exterior stairs are not dimensionally uniform, 780 CMR Section 1019.6.2 NOT COMPLETE
4. Interior Basements stairs have some Broken Treads, 780 CMR Section 103.1, 103.2. Complete
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8. No Dryer vents installed 780 CMR Section 3618.1. NOT complete.
9. Seal Chimney openings 780 CMR, 103.1, 103.2. Complete.
10. INSURE Mechanical Fasteners on New columns in Basement 780 CMR 2305.2. NOT complete

INSPECTOR: [Signature]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

STATE BUILDING CODE APPEALS BOARD

Docket No.

**Property Address: 53 Wilbraham Avenue,
Springfield, Massachusetts**

REQUEST OF APPELLANT LEAH DANIELS FOR REHEARING

NOW COMES appellant herein, Leah Daniels, and requests that the Board grant a rehearing of this matter on the issues previously outlined in Ms. Daniels' Application for Appeal dated July 24, 2007 for the reasons described below.

Specifically, Ms. Daniels asks for a rehearing because:

1. This Board has the legal power to and must take jurisdiction of the issues set out in this appeal under the doctrine of Primary Jurisdiction or Prior resort, despite the fact that the matter has been in court: The Board further has the power to issue the orders requested in the July 21, 2007 appeal application.

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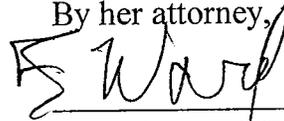
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WHEREFORE, Ms. Daniels moves this Board to take jurisdiction and grant her a rehearing.

Date: October 16, 2007

Leah Daniels
Appellant
By her attorney,



G. Emil Ward, Esquire
Ward & Associates
92 State St., Suite 900
Boston, MA 02109
(617) 248-9765
BBO# 515760

Certificate of Service

I, G. Emil Ward hereby certify that on this day I served a copy of Request of Appellant Leah Daniels for Rehearing in-hand on October 17, 2007 to the following:

Harry P. Carroll, Esquire
City of Springfield
Law Department
36 Court Street, Room 210
Springfield MA 01103

Date: October 16, 2007



G. Emil Ward, Esquire



Permit

CITY OF SPRINGFIELD
INSPECTOR'S SPECIAL REPORT

DATE 5-21-07

ADDRESS IN QUESTION: 53 Wilbraham Av.

OWNERS NAME: Leah Daniels
OWNERS ADDRESS: 12 Marcelle St
Roxbury MA. 02119.

ZONE: Res B TYPE: SB,

BLOCK PLAN# 817

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INSPECTOR: F. Roberts

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

STATE BUILDING CODE APPEALS BOARD

Docket No.

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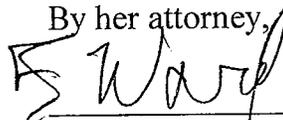
WHEREFORE, Ms. Daniels moves this Board to take jurisdiction and grant her a rehearing.

Date: October 16, 2007

Leah Daniels

Appellant

By her attorney,



G. Emil Ward, Esquire

Ward & Associates

92 State St., Suite 900

Boston, MA 02109

(617) 248-9765

BBO# 515760

Certificate of Service

I, G. Emil Ward hereby certify that on this day I served a copy of Request of Appellant Leah Daniels for Rehearing in-hand on October 17, 2007 to the following:

Harry P. Carroll, Esquire
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Law Department
36 Court Street, Room 210
Springfield MA 01103

Date: October 16, 2007



G. Emil Ward, Esquire



Permit

CITY OF SPRINGFIELD
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DATE 5-21-07

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OWNERS NAME: Leah Daniels

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ZONE: Res B TYPE: SB,

Raybury Way. 02119.

BLOCK PLAN# 817

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INSPECTOR:

[Signature]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

STATE BUILDING CODE APPEALS BOARD

Docket No.

**Property Address: 53 Wilbraham Avenue,
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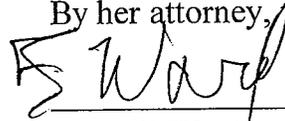
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Date: October 16, 2007

Leah Daniels

Appellant

By her attorney,



G. Emil Ward, Esquire

Ward & Associates

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Boston, MA 02109

(617) 248-9765

BBO# 515760

Certificate of Service

I, G. Emil Ward hereby certify that on this day I served a copy of Request of Appellant Leah Daniels for Rehearing in-hand on October 17, 2007 to the following:

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Law Department
36 Court Street, Room 210
Springfield MA 01103

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G. Emil Ward, Esquire



Permit

CITY OF SPRINGFIELD
INSPECTOR'S SPECIAL REPORT

DATE 5-21-07

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OWNERS NAME: Leah Daniels
OWNERS ADDRESS: 12 Marcella St

ZONE: Res B TYPE: SB,

BLOCK PLAN# 817

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INSPECTOR: [Signature]

STATE BUILDING CODE APPEALS BOARD

DOCKET NUMBER: 05-468

PROPERTY ADDRESS: 53 Wilbraham Avenue, Springfield, MA. 02109

APPELLANT: G. Emil Ward

BUILDING OFFICIAL: Thomas Lagodich

(check one)

Item #	Item	Document Dated	Date Received	Appellant	Building Official
1.	Exhibit #1 (2 sheets of affidavit by the court.)	9-3-07 8-16-07 - Date on Document	9-6-07 Signature Date	✓	
2.	Exhibit #2 - Photo of House		9-6-07		✓
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

WARD & ASSOCIATES

Attorneys at Law

92 State Street, Suite 900
Boston, Massachusetts 02109-2018
(617) 248-9765
FAX (617) 742-8599
www.wardlawonline.com

October 16, 2007

Ms. Patricia Barry, Coordinator
State Building Code Appeals Board
One Ashburton Place
Boston, MA 02108-1618

Property Address: 53 Wilbraham Avenue, Springfield, MA
Owners: Leah Daniels

Dear Ms. Barry:

Please be advised that this office represents Ms. Leah Daniels in this appeal. Enclosed you will find Appellant's Request for a Rehearing. In light of the fact that the basis for the request is the fact that this Board has jurisdiction over most matters which come before it, regardless of whether or not the matter has gone to court, I have included a legal argument near the beginning of the Request.

Your Board stated to me that none of them were attorneys when I was before them on another matter. Therefore, I ask that you forward this request to the Board's legal counsel for his/her review of the legal arguments that the Board in fact has the power to preempt the court in most cases, especially one such as this where issues previously raised by the City involve so intricately judgments very much within the expertise of the Board.

Please inform me when your counsel has received this package so that I may contact him/her and further discuss the issue of Primary Jurisdiction or Prior Resort which gives your Board the right to review cases before the courts do.

I found no regulations for requesting a rehearing. Therefore, I have used the form I thought most appropriate. If there is another form or procedure which we must follow, please so inform me and we will re-submit this Request in that form.

Pursuant to your regulations, I have enclosed an original and 3 copies of the Request and a CD containing the Request in WordPerfect.

Please schedule a hearing on this matter at the earliest opportunity after your counsel has reviewed the matter.

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "G. Emil Ward", written over a horizontal line.

G. Emil Ward, Esquire

c:

Harry P. Carroll, Esquire
client
file

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

STATE BUILDING CODE APPEALS BOARD

Docket No.

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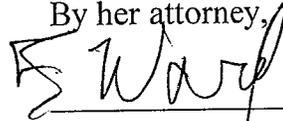
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Appellant
By her attorney,



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G. Emil Ward, Esquire



Permit

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INSPECTOR: [Signature]

FAX COVER SHEET

Please transmit the following pages to:

NAME: Emil

COMPANY: _____

FAX NUMBER: 617-812-5894

From:

NAME: LEAH DANIELS

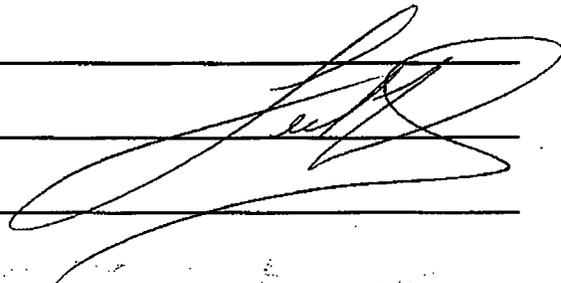
COMPANY: _____

FAX NUMBER: 617-983-1289

TOTAL NUMBER OF PAGES (Including cover page): 3

SENDER'S MESSAGE:

PLEASE FIND FAXED CHAFFIN'S AFFIDAVIT.



STATEMENT OF CONFIDENTIALITY

The document included with this facsimile transmittal sheet contains information, which is confidential and/or privileged and intended for the use of the address named on this transmittal sheet. The disclosure, photocopying, distribution, or use of the contents of this information by any person except the addressee is prohibited. If you have received this facsimile communication in error, please contact the person listed as having sent this facsimile.

STATE BUILDING CODE APPEALS BOARD

OPENING STATEMENT:

Mr. Chairman:

The date is: September 6, 2007 the docket # is 05-468

The appellant is: G. Emil Ward, Esq., Ward & Associates

92 State Street, Suite 900, Boston, MA. 02109

The property involved is:

53 Wilbraham Avenue, Springfield, MA. 01104

The appeal is based on the provisions of the 6th Edition of the State Building Code relative to: (Section/Table)

780 CMR 1014.6.2, Section 709-1 Table 602, Sections 1304.1, 1305.2.8, 3618.1

Relief desired:

DECISION: (Please complete this section at the hearing).

The Building Official supported/opposed the appeal filing:

Board members voted to:

Grant Appeal

Deny Appeal

Reason for approval/denial: _____

The decision was _____ unanimous/ _____ objected to by: _____

Reason for objection: _____

Provisos (if any): _____

BOARD: _____



Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

Edward A. Flynn
Secretary

The Commonwealth of Massachusetts

Department of Public Safety

Board of Building Regulations and Standards

One Ashburton Place, Room 1301

Boston, Massachusetts 02108-1618

Phone (617) 727-3200

Fax (617) 227-1754

Thomas G. Gatzunis, P.E.
Commissioner

Stanley Shuman
Chairman

Gary Moccia
Vice Chairman

Thomas L. Rogers
Administrator

STATE BUILDING CODE APPEALS BOARD

Date: February 23, 2005

Name of Appellant: Ms. Leah Daniels
Service Address: 12 Marcella Street
Boston, MA. 02119

In reference to:
Docket Number: 05-023

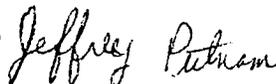
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Springfield, MA. 01103

Date of Hearing: February 15, 2005

We are pleased to enclose a copy of the decision relative to the above case wherein certain variances from the State Building Code had been requested.

Sincerely:

STATE BUILDING CODE APPEALS BOARD


Jeffrey Putnam, Clerk

cc: State Building Code Appeals Board
Building Official
Fire Official

STATE BUILDING CODE APPEALS BOARD

Docket Number: 05-023

Date: February 23, 2005

All hearings are audio-recorded and the audio tape (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the audio tape are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
1 Ashburton Place -- Room 1301
Boston, MA 02108

Summary of hearing:

All parties were duly sworn prior to offering testimony.

Attendees: Leah Daniels, Appellant
Erskine Chaffin, Appellant's Representative
Joseph Bell, Municipal Building Official - City of Springfield

Background: In his letter, dated December 9, 2004, Mr. Stephen Desilets, Building Inspector for the City of Springfield, served a letter to Ms. Leah Daniels, in reference to the following Sections of 780 CMR, Sixth Edition (the State Building Code), 904.7 & 3402.12.3, for property located at 53 Wilbraham Avenue. A copy of said letter is made part of this decision.

The construction type of the subject building is 5B, and the use group contained within is Residential (R-2).

Relief Requested: The Appellant requested relief in the form of a variance to allow a renovation to a 5-family residential dwelling without installing a fire sprinkler system.

Appellants:

The appellants testified that they want to renovate a 5-unit residential building, but the city will not allow them to dig up the street for connection to the proposed required sprinkler system. Also, the pipe in the street is not be large enough to provide the necessary water pressure for the sprinkler system, so the pipe would have to be replaced.

STATE BUILDING CODE APPEALS BOARD

Docket Number: 05-023
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The appellants testified that the fire alarm system has heat detectors and smoke detectors, and the system is centrally monitored by an independent party. The fire alarm system has been approved by the fire department in January 2005 with the knowledge that they were appealing the building official's decision to have a sprinkler system installed since the city will not allow them to connect to the city water supply. The fire official told them they have no objection to the granting of the requested variance.

Municipal Building Official:

The building official was present at the hearing, and testified that he does not object to the granting of the requested variance nor does the local fire department.

Decision: Following testimony, and based upon relevant information provided, Board members voted as indicated below.

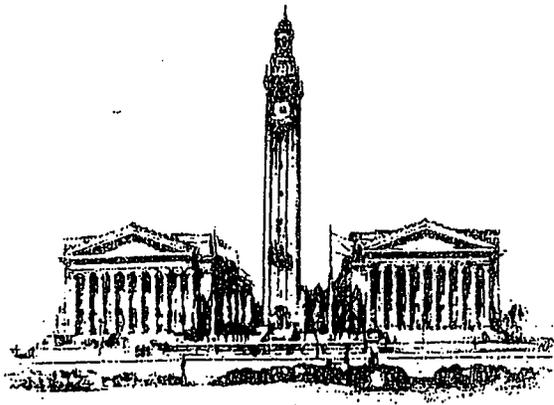
- **Granted** Denied Rendered Interpretation
- Granted with conditions (see below) Dismissed

The vote was:

- **Unanimous** Majority

Variance Granted for:

780 CMR 904.7 & 3402.12.3. The appellant does not have to install a sprinkler system in the 5-unit residential building.



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

In Reply Refer To:
53 Wilbraham Avenue

CODE ENFORCEMENT DEPARTMENTBUILDING DIVISION**

October 26, 2005

Leah Daniels
4 Quebec Street, I.O.
Springfield, MA 01151

We acknowledge the receipt of your letter of request for a Temporary Certificate of Occupancy in regards to Permit #0401168 issued September 2, 2004 to repair a multi-residence building. (Five Family)

According to our records, all the work has been completed except for the sheetrock and finishes for the 3rd floor, apartment #5.

We do therefore issue The Temporary Certificate of Occupancy to occupy the dwelling at 53 Wilbraham Avenue, the 1st and 2nd floor apartments #1, #2, #3, #4 Only.

This Temporary Certificate of Occupancy will expire on December 1, 2005.

When all the work has been completed, we will then issue the Permanent Certificate of Occupancy.

Sincerely,

Steven T. Desilets
Code Enforcement Commissioner

STD:sar

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS

**HOUSING COURT
DEPARTMENT OF THE TRIAL
C.V. NO. 06-TR-929**

City of Springfield)
Code Enforcement Department)
Housing Division,)
Plaintiff)
v.)
Leah Daniels (Owner),)
Defendant)
_____)

Affidavit of Ronald Baker

I, Ronald Baker, hereby depose and say that:

1. I have been in the building and trades industry for approximately thirty five years.
2. During that time I have done contracting myself, I have supervised construction work on various real property in the Commonwealth of Massachusetts.
3. I have worked for several lending institutions and community development corporations preparing work write ups & cost estimates for housing rehabilitation. I am rehab consultant #1143 listed by HUD & Mass Housing Finance Agency.
4. I have been a home inspector for approximately twelve years. My license (#430) was issued in 2001 when the State regulations were passed.
5. I have an office in Jamaica Plain, Massachusetts, where I train potential home inspectors to prepare for the National Home inspectors' exam which is a prerequisite to obtaining their home inspector's licenses.
6. I have been qualified as an expert witness to testify in the Boston Housing

Court within the last eighteen months.

7. On June 7, 2007, I went to the property standing at 53 Wilbraham Avenue in Springfield, Massachusetts.
8. There I observed the alleged violation for a lack of fire separation between the floors of the building as briefly described at Paragraph 5 of Exhibit B.
9. It is my professional opinion that the fire retardant tiles and the fire retardant grid comply with the State Building Code and that sheet rock is not therefore required on any of these floors to comply with the applicable Building Code.
10. I have been told that the wires remaining after removing the electrical dryer outlets and the corresponding circuit breakers were supposedly a violation cited by the City of Springfield. In my opinion, because these wires are not "live" and cannot be readily be made "live" they are not likely to constitute a violation of either the Building Code.

Signed under the pains and penalties of perjury this day.

Date: June 7, 2007

Ronald Baker



A handwritten signature in cursive script that reads "Ronald A. Baker".

Figure 1-6.2.1 Record of completion.

FIRE ALARM SYSTEM
RECORD OF COMPLETION

Name of protected property: Leah Daniels
Address: 53 Wilbraham Ave
Representative of protected property (name/phone): _____
Authority having jurisdiction: _____
Address/telephone number: _____

1. Type(s) of System or Service

NFPA 72, Chapter 3 — Local
If alarm is transmitted to location(s) off premises, list where received: _____

NFPA 72, Chapter 3 — Emergency Voice/Alarm Service
Quantity of voice/alarm channels: _____ Single: _____ Multiple: _____
Quantity of speakers installed: _____ Quantity of speaker zones: _____
Quantity of telephones or telephone jacks included in system: _____

NFPA 72, Chapter 6 — Auxillary
Indicate type of connection:
 Local energy Shunt Parallel telephone
Location of telephone number for receipt of signals: _____

NFPA 72, Chapter 5 — Remote Station
Alarm: _____
Supervisory: _____

NFPA 72, Chapter 5 — Proprietary
If alarms are retransmitted to public fire service communications centers or others, indicate location and telephone numbers of the organization receiving alarm: _____
Indicate how alarm is retransmitted: _____

NFPA 72, Chapter 5 — Central Station
Prime contractor: _____
Central station location: _____
Means of transmission of signals from the protected premises to the central station:
 McCulloh Multiplex One-way radio
 Digital alarm communicator Two-way radio Others

Means of transmission of alarms to the public fire service communications center:
(a) _____
(b) _____
System location: _____

(NFPA Record of Completion 1 of 4)

Figure 1-6.2.1 (Continued)

Organization name/phone T.B.S. Security Representative name/phone 739-2271
 Installer _____
 Supplier Same
 Service organization Same
 Location of record (as-built) drawings: _____
 Location of owners manuals: At FACP
 Location of test reports: Same
 A contract, dated 5/11/05, for test and inspection in accordance with NFPA standard(s)
 No(s). _____, dated 5/11/05, is in effect.

2. Record of System Installation

(Fill out after installation is complete and wiring checked for opens, shorts, ground faults, and improper branching, but prior to conducting operational acceptance tests.)

This system has been installed in accordance with the NFPA standards as shown below, was inspected by R. W. [Signature] on 5/11/05, includes the devices shown below, and has been in service since 5/11/05.

- NFPA 72, Chapters 1 2 3 4 5 6 7 (circle all that apply)
- NFPA 70, National Electrical Code, Article 760
- Manufacturer's instructions
- Other (specify): _____

Signed: [Signature] Date: 5/11/05
 Organization: _____

3. Record of System Operation

All operational features and functions of this system were tested by R. W. [Signature] on 5/11/05, and found to be operating properly in accordance with the requirements of:

- NFPA 72, Chapters 1 2 3 4 5 6 7 (circle all that apply)
- NFPA 70, National Electrical Code, Article 760
- Manufacturer's instructions
- Other (specify): _____

Signed: [Signature] Date: 5/11/05
 Organization: _____

4. Alarm-Initiating Devices and Circuits

Quantity and class of initiating device circuits (see NFPA 72, Table 3-5) Quantity: _____ Style: _____ Class: _____

MANUAL

- (a) 1 Manual stations _____ Noncoded, activating _____ Transmitters _____ Coded
- (b) _____ Combination manual fire alarm and guard's tour coded stations

AUTOMATIC

- Coverage: Complete: _____ Partial: _____
- (a) 8 Smoke detectors _____ Ion X Photo
 - (b) _____ Duct detectors _____ Ion _____ Photo
 - (c) 8 Heat detectors X FT _____ RR _____ FT/RR _____ RC

Figure 1-6.2.1 (Continued)

- (d) _____ Sprinkler waterflow switches: _____ Transmitters. _____ Noncoded, activating _____ Coded
- (e) _____ Other (list): _____

5. Supervisory Signal-Initiating Devices and Circuits (use blanks to indicate quantity of devices)

GUARD'S TOUR

- (a) _____ Coded stations
- (b) _____ Noncoded stations, activating _____ transmitters
- (c) _____ Compulsory guard tour system comprised of _____ transmitter stations and _____ intermediate stations

Note: Combination devices are recorded under 4(b) and 5(a).

SPRINKLER SYSTEM

- (a) _____ Coded valve supervisory signaling attachments
Value supervisory switches, activating _____ transmitters
- (b) _____ Building temperature points
- (c) _____ Site water temperature points
- (d) _____ Site water supply level points

Electric fire pump:

- (e) _____ Fire pump power
- (f) _____ Fire pump running
- (g) _____ Phase reversal

Engine-driven fire pump:

- (h) _____ Selector in auto position
- (i) _____ Engine or control panel trouble
- (j) _____ Fire pump running

Engine-driven generator:

- (k) _____ Selector in auto position
- (l) _____ Control panel trouble
- (m) _____ Transfer switches
- (n) _____ Engine running

Other supervisory function(s) (specify): _____

6. Alarm Notification Appliances and Circuits

Quantity and class (see NFPA 72, Table 3-7) of notification appliance circuits connected to the system:

Types and quantities of notification appliances installed: Quantity: _____ Style: _____ Class: _____

- (a) _____ Bells _____ Inch
- (b) _____ Speakers
- (c) X _____ Horns
- (d) _____ Chimes
- (e) _____ Other: _____

Figure 1-6.2.1 (Continued)

- (f) 7 ~~Visual~~ signals Type: Central Command
 with audible w/o audible
- (g) Six Local annunciator

7. Signaling Line Circuits

Quantity and class (see NFPA 72, Table 3-6) of signaling line circuits connected to system:

Quantity: _____ Style: _____ Class: _____

8. System Power Supplies

(a) Primary (main): AC Nominal voltage: 120 V Current rating: 20 Amp

Overcurrent protection: Type: _____ Current rating: _____

Location: _____

(b) Secondary (standby):

Storage battery: Amp-hour rating: 14 AH

_____ Calculated capacity to drive system, in hours: _____ 24 _____ 60

_____ Engine-driven generator dedicated to fire alarm system:

Location of fuel storage: _____

(c) Emergency or standby system used as backup to primary power supply, instead of using a secondary power supply:

_____ Emergency system described in NFPA 70, Article 700

_____ Legally required standby system described in NFPA 70, Article 701

_____ Optional standby system described in NFPA 70, Article 702, which also meets the performance requirements of Article 700 or 701

9. System Software

(a) Operating system software revision level(s): _____

(b) Application software revision level(s): _____

(c) Revision completed by: _____ (name) _____ (firm)

10. Comments:

[Signature] Tech 5/11/05
(signed) for central station or alarm service company or installation contractor/supplier (title) (date)

Frequency of routine tests and inspections, if other than in accordance with the referenced NFPA standard(s):

System deviations from the referenced NFPA standard(s) are:

[Signature] Tech 5/11/05
(signed) for central station or alarm service company or installation contractor/supplier (title) (date)

Upon completion of the system(s) satisfactory test(s) witnessed (if required by the authority having jurisdiction):

[Signature] FPS 7/1/05
(signed) representative of the authority having jurisdiction (title) (date)



Exhibit

DATE 5-21-07

CITY OF SPRINGFIELD INSPECTOR'S SPECIAL REPORT

ADDRESS IN QUESTION: 53 Wilbraham Av.
ZONE: Res B TYPE: SB
BLOCK PLAN# 817

OWNERS NAME: Leah Daniels
OWNERS ADDRESS: 12 MARCELLA ST
Roxbury MA. 02119.

A reinspection of 53 Wilbraham Av. on 5-18-07 revealed the following:

- 1. No emergency egress lighting on second floor hallway and third floor stairwell front stairs. No emergency egress lighting near stairwell 780 CMR. Section 102.4 - COMPLETE.
- 2. Third floor rear exit horizontal is short. 780 CMR Section 1022.2.4 - Complete.
- * 3. Front exterior stairs are not dimensionally uniform. 780 CMR Section 1014.6.2 Not Comp.
- * 4. Interior basement stairs have some Balcon Trends. 780 CMR Section 103.1, 103.2. Complete.
- * 5. No fire separation between base, first floor, second floor, third floor. 780 CMR Section 709-1 Table 602. NOT Complete.
- * 6. No insulation between basements on first floor 780 CMR. Section 1304.1 No Complete.
- * 7. No insulation on supply ductwork in basement. 780 CMR Section 1305.7.8 Not complete.
- * 8. No dryer vents installed 780 CMR Section 3618.1. NOT complete.
- * 9. Seal chimney openings 780 CMR, 103.1, 103.2. Complete.
- * 10. Install mechanical fasteners on new columns in basement 780 CMR 2305.2. NOT complete

INSPECTOR: F. Roberts

Barry, Patty (DPS)

From: Barry, Patty (DPS)
Sent: Wednesday, November 14, 2007 10:47 AM
To: Anderson, Robert (DPS); 'Brian Gale'; Haagensen, Dana (DFS)
Subject: Re-hearing on December 18, 2007
Attachments: Docket#05-468MemofromTodd.pdf

Importance: High

Guys,
If you read this information this is a case that the three of you all sat on September 6, 2007. At that time it was determined that we should forward this hearing to Legal Counsel to see if we have jurisdiction or not. I did give this to Todd Grossman and you can read his reply. That being said can the three of you all appear for this re-hearing on December 18, 2007? If needed and you all cannot sit for the entire day, please let me know and I will schedule it for the first hearing and do what I can to find replacements for the rest of the day. Thanks so much everyone. I look forward to your response back..

Patty