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

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 07-15
764 Mammoth Road
Dracut, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This administrative appeal is held in accordance with Massachusetts General Law, Chapter 30A; Chapter 148, section 26G, Chapter 6, section 201 and 530 CMR, relative to a determination of the Dracut Fire Department, ordering the installation of automatic sprinklers in a building built by the Cutter Farm on property owned by D & J Management Group. John O'Brien, the representative of the owner/operator of the business and hereinafter referred to as the Appellant, received the determination. The building, which is the subject of the order, is located at 764 Mammoth Road, Dracut, MA.

B) Procedural History

By letter dated June 4, 2007 and received by the Appellant on the same date, the Dracut Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in the "riding ring" building that the Appellant constructed on the subject property located at 764 Mammoth Road, Dracut, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148, s. 26G. On June 11, 2007, the Appellant filed an appeal of this decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on September 12, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing on behalf of the Appellant was: John O'Brien, representative of the owner/operator; Vernon Woodworth, Consultant; and Michael Graf, Architect, Graf Design Associates. Appearing on behalf of the Dracut Fire Department was: Town Counsel Raymond Weicker; Chief Leo Gaudette; Deputy Chief Michael Ralls; and Dracut Building Inspector Dan McLaughlin.

Present for the Board were: Paul Donga, Acting Chairman; Chief Thomas Coulombe; Alexander MacLeod; Peter Gibbons; John J. Mahan; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the Order of the Dracut Fire Department requiring automatic sprinklers in the Appellant's building in accordance with the provisions of M.G.L. c.148, s. 26G?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Notice of Dracut Fire Department to Appellant
4. Notice of Hearing to Appellant
5. Notice of Hearing to Dracut Fire Department
6. Drawing of the riding facility
7. Photographs (A-C)
8. Dracut Fire Department submissions (web pages, pgs. 1-12)
9. Additional submissions - Dracut Fire Department (items 1-13)

E) Subsidiary Findings of Fact

- 1) By letter dated June 4, 2007 and received by the Appellant on the same date, the Dracut Fire Department issued a determination to the Appellant requiring that automatic sprinklers be installed in a building that the Appellant proposed to construct on the property at 764 Mammoth Road, Dracut. Said determination was issued under the provisions of M.G.L. c. 148, s. 26G. On June 11, 2007, the Appellant filed an appeal of said determination with the Automatic Sprinkler Appeals Board pursuant to the provisions of s. 26G. Upon appropriate notification to the parties, a hearing was held on September 12, 2007. Mr. John O'Brien asserts that he is representing both the owner of the property and the owner/operator of the business.
- 2) There is no disagreement between the parties that the Town of Dracut has adopted the provisions of M.G.L. c. 148, § 26G, a local option law which requires enhanced sprinkler protection in certain buildings or structures. Additionally, the parties agree that this building consists of more than 7,500 gross square feet in floor area, as required by said section 26G.
- 3) The Appellant indicated that the building is a single level, consisting of approximately 17,430 square feet. The building is 210 ft. x 83 ft. by 27 feet in height. Appellant asserts that the building is designed and is going to be to used as an arena for the exercise and training of riding horses and to teach persons in the proper riding and care of horses. They indicated that the use of said facility will only be used by those who are participating in such riding, instructional and training activities with no audience or persons within the building for observation or show viewing. The Appellant indicated that this activity is clearly related to the raising, training and sale of horses and testified that the value of a horse upon sale is often based upon the amount of training. Appellant further indicated that observations and shows do occur in another outdoor riding arena. There are no bathrooms or heat in the subject building. There are two large sliding doors at each end of the building and two 36" doors at the front of the building.

- 4) The Appellant indicated that the building is wood frame construction with a poured concrete base, and features a special dirt floor for the riding/training of horses. There are no restrooms, heat, or air conditioning. The Appellant did indicate that there is a manual "sprinkler type" water system in the building, which is used for the wetting of the dirt floor to keep down the dust.
- 5) It is the Appellant's position that the building is not subject to the provisions of s. 26G since that law creates a specific exemption from the sprinkler requirements for buildings used for agricultural purposes as defined in M.G.L. c. 128, s. 1A. The Appellant stated that the building, while not currently in use, would be used for the keeping of horses as a commercial enterprise. The representative stated that the building presents a low fire risk since it contains little or no combustibles.
- 6) The representative of the Appellant testified that the original plans for the building, that were approved by the Building department and the fire department, contained a riding area and a viewing facility separated by a fire wall and that both the riding and viewing facilities were to contain sprinklers and a fire detection system. However, during construction the plan was changed, without the approval of the building or fire departments. The new plan eliminated the viewing facility and built the "riding arena" only. Appellant also contends that, for this particular "U" use group construction, they believe that a permit is also not required. The Appellant testified that the determination of the building as a "U" use group has been confirmed by the Board of Building Regulations and Standards Appeals Board. However a written decision has not been issued as of the date of this hearing.
- 7) The representatives of the Fire Department are concerned that the building will not have any fire protection or fire suppression devices in the event of a fire and indicated that if the building already contains a manual wetting system similar to a sprinkler system, that the facility should be fully sprinklered. The fire department indicated that the Appellant has not been forthright in their planning of this establishment and changed their plans after construction.
- 8) The Attorney for the Fire Department contends that the agricultural exemption in s. 26G, which incorporates the language in M.G.L. 128, s. 1A, although applying to a horse stable, does not appear to specifically include a riding arena or places of equestrian performances. The Fire Chief further indicated that despite the Appellant's assertion that this facility should receive an agricultural exemption, this facility actually operates in a more commercial manner. He also indicated that the Appellant's assertion that the facility is not in use, is not true. In support of this conclusion he submitted a photograph, which depicted several individuals inside the facility riding horses. He also stated that the Cutter Farm operates more of a riding school, rather than a horse farm, and that the facility does not have any registration for horses for breeding and cannot provide any information on previous sales of horses.
- 9) The Appellant did not present any specific plans for sprinklers. It appears, however, that water is available for such a system, if it is required.

F) Ultimate Findings of Fact and Conclusions of Law

1. The Town of Dracut has adopted the provisions of M.G.L. c. 148 § 26G, a local option law, which requires that every building of more than 7,500 gross square feet in floor area be protected

throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. In accordance with section 1 of c. 545 of the Acts of 1982, this sprinkler requirement, in pertinent part, applies to "... construction of buildings... commenced after July 1, 1983".

2. The subject building has more than 7,500 gross square feet in floor area.
3. The building is designed and is going to be to used as an arena for the exercise and training of horses and to teach persons in the proper riding and care of horses. Such activities are directly related to the raising and keeping of horses as a commercial enterprise.
4. The Board finds that the subject building, as it is has been described at the hearing is not subject to the requirements of M.G.L. c. 148, s. 26G, since its current intended use brings it within the agricultural exemption found in the statute. Specifically, such exemption includes: "Buildings used for agricultural purposes as defined in section one A of chapter one hundred and twenty-eight." Said section 1 A states:

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

At the hearing, the parties referenced a court decision, Steege et.al. v. Board of Appeals of Stow, 26 Mass. App. Ct. 970 (1988), wherein, in an issue relating to a local zoning regulation, the Commonwealth's Appeals Court ruled that the words "agricultural use" includes "the purchase and raising of horses, their stabling, training through the operation of the riding school, and their participation in horse shows are all part of the one whole and constitute agriculture as that phrase is used in c. 40A, s. 3". Accordingly, in Steege, the court broadly included, within the c. 40, s.3 use of the words "agricultural use", the specified activities relating to horses. The board notes that the court reached this conclusion notwithstanding the absence of any modifying language within said s. 3 referring to horse related activities. In the case at hand, the guiding statute, M.G.L. c. 28, s.1A, as referenced above, clearly includes a reference to such equine activities, thus providing further legislative interpretive support for this Board's determination to apply the exemption to the subject building and its intended use, as described at the hearing.

G) Decision and Order of the Automatic Sprinkler Appeals Board

After careful review of all the testimony and evidence presented, the Board hereby unanimously reverses the determination of the Dracut Fire Department to require sprinklers in the subject

proposed building in accordance with the requirements of M.G.L. c. 148, s. 26G. However, this determination is conditioned upon the continued use of the building limited to those activities as represented by the Appellant at the hearing. Specifically the use of this building shall be limited to the raising, exercise, maintenance and training of horses and to riding and horse handling lessons by participants only, with no audience or persons within the building for observation or show viewing.

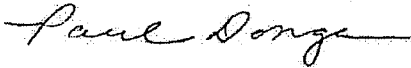
H) Vote of the Board

Paul Donga, Acting Chairman	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Peter Gibbons	In Favor
John J. Mahan	In Favor
Aime R. DeNault	In Favor
George A. Duhamel	In Favor

I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Paul Donga, Acting Chairman
Automatic Sprinkler Appeals Board

Dated: November 13, 2007

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, POSTAGE PREPAID TO:

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