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LT. GOVERNOR

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SECRETARY

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

*Automatic Sprinkler Appeals Board*

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MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 07-11**  
**125 Windkist Farm Road**  
**North Andover, 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 North Andover Fire Department, ordering the installation of automatic sprinklers in a building proposed to be built by the Windkist Equestrian Centre, Inc. on property owned by the Windkist Family Trust. The determination was received by Patricia A. Lambert, owner of the business and trustee and hereinafter referred to as the Appellant. The proposed building, which is the subject of the order, is located at 125 Windkist Farm Road, North Andover, Ma.

**B) Procedural History**

By letter dated February 27, 2007, the Head of the North Andover Fire Department issued a determination to the Appellant requiring automatic sprinklers to be installed in the "riding ring" building that the Appellant proposes to construct on the subject property located at 125 Windkist Farm Road, North Andover, Ma. The determination was issued pursuant to the provisions of M.G.L. c. 148, s.26G. On March 14, 2007, the Appellant filed an appeal of this decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on May 9, 2007, at the Commonwealth's Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing were the Appellant, Patricia A. Lambert and Ernest A. Langthorne, Construction Manager. Appearing on behalf of the North Andover Fire Department were: Chief William C. Dolan; Deputy Chief William P. Martineau; Andrew Melnikas of the North Andover Fire Department Fire Prevention Bureau; Thomas Urbelis, North Andover Town Counsel and Gerald Brown, North Andover Building Inspector.

Present for the Board were: Thomas Coulombe, Acting Chairman; Alexander MacLeod, 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 North Andover 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. Copy of North Andover Board of Health Animal License (issued 3/1/2007)
4. Order of Notice of North Andover Fire Department to Appellant
5. Undated Letter from N. Andover Building Department to Appellant Re: Permit to build
6. Letter from the Mass. Dept. of Agricultural Resources
7. Proposed exterior views of facility
8. Notice of Hearing to Appellant
9. Notice of Hearing to North Andover Fire Dept.
10. Copy of Appellant's Website (pgs. 1-3)
11. Agricultural Land License
12. Engineer's Report

**E) Subsidiary Findings of Fact**

1. By letter dated February 27, 2007, the head of the North Andover Fire Department issued a determination to the Appellant requiring that automatic sprinklers be installed in a building that the Appellant proposed to construct on her property at 125 Windkist Farm Road, North Andover. Said determination was issued under the provisions of M.G.L. c. 148, s. 26G. On March 14, 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 May 9, 2007.
2. There is no disagreement between the parties that the Town of North Andover 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 26G1/2.
3. The Appellant indicated that the proposed building is a single level building consisting of approximately 62 ft. x 136 ft. and 14 feet in height that will be designed and used as an area used to exercise and train riding horses and to teach persons in the proper riding and care of horses. Such activity is a supplement to related activities, which occur in other buildings at this location.
4. The Appellant indicated that the proposed building will be of steel and wooden truss construction and will feature a dirt floor. There will be no restrooms, heat, air conditioning or water available within the building. Appellant stated that the particular building will not be used for horse show viewing purposes. She indicated that horses will be walked around the interior perimeter of the

building, therefore precluding non-participants to enter into the area for the purposes of viewing activities. She indicated that another building on the property is used for such shows.

5. It is the Appellant's position that the proposed building is not subject to the provisions of s. 26G since said 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. She stated that the building will be used for the keeping of horses as a commercial enterprise. The Appellant submitted a copy of a letter from the Assistant Commissioner and Chief of Staff of the Commonwealth's Department of Agriculture, which essentially supports Appellant's position.
6. In support of the exemption, Appellant testified that she owns and operates a commercial enterprise located on approximately 16 acres of land. It includes a barn with forty-five horse stalls, two existing outdoor riding arenas and an existing indoor riding arena, as well as three apartments. She indicated that she is in the business of raising, selling, training and boarding horses, as well as providing riding lessons. The facility is licensed by the town to conduct such activities. She indicated that during the past year the business purchased six and sold seven horses. Appellant indicated that this particular building will be used to exercise and train horses and to give riding and horse handling lessons. Appellant indicated that she also possesses a horseback riding instructor's license and the facility has been issued farm licenses from both the Commonwealth and the Town. She also presented a M.G.L. c. 61A determination issued by the Town of Andover Board of Assessors, which classifies the land as being used for agricultural purposes.
7. The Appellant further indicated that the farm currently uses a well system and that the nearest water supply to the proposed building is 200-300 feet away.
8. The representatives of the Fire Department indicated that a foundation has already been constructed for this building without a building permit. They indicated that the Appellant contends that a permit is not required since the building is going to be used for agricultural purposes. This issue relating to the need for a building permit is before the Commonwealth's Board of Building Regulations and Standards. As of this hearing date, no determination has been rendered by said Board.

Notwithstanding the matter relating to the building permit, this Board continued to hear this case, as it has been the longstanding position of this board that M.G.L. c. 148, s.26G issues are separate and distinct from the requirements of the State Building Code.

9. 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. They also raised issues about complications relating to the large and heavy "garage" type doors that would be the only means to enter and exit the building. Such garage doors under existing codes are not considered an appropriate means of egress. They were also concerned about situations created by handicapped students. The Appellant indicated that the facility does not offer instruction to handicapped children due to the lack of certified instructors. In conclusion, the Fire Chief is concerned that this building has not been subject to the typical building permit process and therefore has not been classified under the building code. The building could therefore be used for public assembly shows, storage of hay, supplies or vehicles or for whatever use at the discretion of the owner.

10. The Appellant rebutted the Chief's argument indicating that she has continuously indicated to town officials that this building will not be used for public assembly use and will be limited to the activities involving participant activities, as aforementioned.

**F) Ultimate Findings of Fact and Conclusions of Law**

1. The Town of North Andover has adopted the provisions of M.G.L. c. 148, s. 148, s. 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 proposed subject building has more than 7,500 gross square feet in floor area.
3. The Board finds that the proposed 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.1, as referenced above, clearly includes a reference to such equine activities, thus providing further support for this Board's determination to apply the exemption to the subject building and its intended use as proposed.

**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 North Andover 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 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. This determination shall not be construed to supersede any determination pending before the state Board of Building Regulations and Standards relative to the requirements of a building permit.

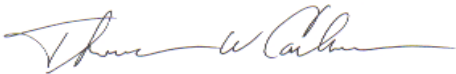
**H) Vote of the Board**

Thomas Coulombe, Acting Chairman	In Favor
Alexander MacLeod	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,



Thomas Coulombe, Acting Chairman  
Automatic Sprinkler Appeals Board

Dated: June 22, 2007

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

Patricia A. Lambert  
Windkist Equestrian Centre, Inc.  
115 Windkist Farm Road  
North Andover, Massachusetts 01845

Chief William V. Dolan  
North Andover Fire Department  
124 Main Street  
North Andover, Massachusetts 01845