

VIRGINIA:

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BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Jeff Ligon
Appeal No. 02-11

Decided: January 24, 2003

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In June of 2002, the Pulaski County office responsible for the enforcement of the USBC notified two residential concrete foundation installers of a policy dictating how long formwork had to be left in place after the pouring of concrete foundation walls.

Mr. Jeffery E. Ligon ("Ligon"), one of the installers, filed an appeal to the Pulaski County Building Board of Appeals ("County USBC board"), which heard the appeal and ruled that the County was correct in its determinations.

Ligon then appealed to the Review Board.

In consideration that the action by the County officials appeared to be a general policy directive and did not appear to be the enforcement of the USBC for a particular project or under an issued USBC permit, Review Board staff scheduled a preliminary hearing to determine whether a valid USBC appeal existed. Ligon and County officials were given opportunity to submit written arguments concerning the preliminary issue and were notified of the time and place of the preliminary hearing. No written arguments were submitted; however, Ligon was present and testified at the preliminary hearing.

III. FINDINGS OF THE REVIEW BOARD

The Pulaski County directive concerning how long to leave the formwork on concrete foundation walls stems from a dispute between Ligon and the County on a particular project. However, Ligon agrees that he was never cited for a USBC violation for that particular job.

The purpose of the directive issued by the County officials appears to be to put Ligon and any other concrete foundation installers operating in the County on notice of what criteria will be used to approve future concrete foundations. Since this directive was not issued pursuant to any USBC permit or referencing any specific construction project currently underway, the Review Board finds that no application of the USBC has taken place.

Under § 112.5 of the USBC, an appeal may be filed of "the code official's decision concerning application of the USBC ...". In this case, there has been no application of the USBC, therefore, there is no valid appeal.

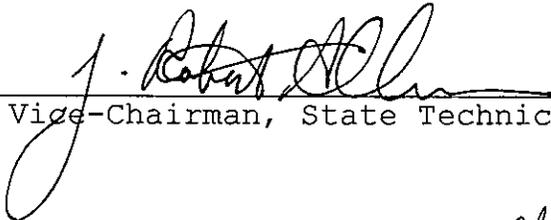
Concern was raised by Ligon that for a valid appeal to occur, foundation walls would have to be deliberately constructed in conflict with the County's directive in order to receive a notice of noncompliance so that an appeal may be filed.

While not affecting the determination that no valid appeal exists in the situation presented, the Review Board notes that plans and specifications are generally required for any USBC

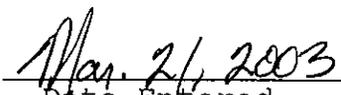
project. When such plans are submitted for the construction of foundation walls, the specifications may indicate the time period for curing prior to stripping the formwork. Should a USBC official or enforcing agency reject such plans, requiring instead a longer time period, the permit holder or other person involved in the construction project would have a right to appeal such rejection under § 122.5 of the USBC. Therefore, no actual work would have to be deliberately constructed in conflict with a directive of a USBC enforcement agency to enable a valid appeal to be filed.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County USBC board to be, and hereby is, overturned and vacated since no valid appeal existed before it. Further, the Review Board orders Ligon's appeal to the Review Board to be, and hereby is, dismissed as invalid.



Vice-Chairman, State Technical Review Board



Date Entered