VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Atlantic Homes, LLC
Appeal No. 10-21

Hearing Date: February 18, 2011

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 2006, Atlantic Homes, LLC (Atlantic), a residential builder, among other new homes it was constructing, began construction of four homes in the Overlook Point subdivision in York County.

After completion of the homes, Atlantic determined there was reason to believe that certain drywall, imported from China by Venture Supply, Inc., may have been used in the construction of the homes and could result in the off-gassing of sulfur compounds deleterious to the plumbing, heating and electrical systems of the homes. Atlantic notified the homeowners and forwarded them contact information for its insurance company.

Shortly thereafter, the owners of the homes contacted the York County Department of Environmental and Development Services (County building official), the local government agency responsible for the enforcement of the USBC, with concerns about the drywall.

Subsequent to investigation, the County building official determined that the drywall in question installed in the homes did not comply with the USBC and issued USBC violation notices to Atlantic.

Atlantic appealed the notices to the York County Board of Building Code Appeals (County appeals board), which after hearing, upheld the County building official's actions.

Atlantic then further appealed to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

The issues before the Review Board are whether the drywall in question complies with the USBC, and if not, whether a USBC notice of violation is the appropriate action under the USBC, or whether the violation would instead just be documented by the County building official due to the application of Section 115.2.1, which addresses violations discovered later than two years after the issuance of the USBC certificate of occupancy or the initial occupancy, whichever occurs later.

As to whether the drywall in question complies with the USBC, Section 112 of the USBC provides in general that materials shall meet recognized standards for performance. The USBC incorporates by reference the International Residential Code (IRC)[1], which lists standards for drywall.

A material which meets such recognized standards is typically required to be labeled or listed to identify that the standards have been met. The drywall in question was not

[1] The 2003 edition of the IRC is applicable to the homes in question.

labeled or listed as complying with the standards for drywall in the IRC.

The USBC, also in Section 112, provides for alternative approval of unlisted or unlabeled materials if shown to be equivalent to those listed or labeled, provided reliable test and evaluation data is presented. The listing of a material by a nationally recognized testing laboratory is considered sufficient under Section 112.

Some test results for the drywall in question conducted by the EI Group, Inc. were submitted; however, no comprehensive report was provided with assurances that the drywall in question met the standards specified in the IRC.

Much evidence was submitted substantiating that the drywall in question had caused corrosion of heating, air-conditioning, plumbing and gas systems in the homes. That, coupled with the lack of a comprehensive report on the testing of the material, or a listing or labeling of the material as evidence of meeting the standards specified in the IRC, raises sufficient questions to substantiate a determination that the drywall does not comply with the USBC.

As to whether the issuance of a USBC notice of violation was appropriate, rather than just a documentation of the violation under Section 115.2.1, the Review Board finds the evidence to indicate that the discovery of the violations was

made by the homeowners shortly after receiving the letter from Atlantic. The letter from Atlantic was dated November 19, 2009. The earliest occupancy of the four homes was on December 17, 2007, less than two years prior to the discovery of the violations. Therefore, Section 115.2.1 of the USBC is not applicable.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the County building official and County appeals board that the drywall in question did not comply with the USBC and that the County building official appropriately issued USBC notices of violation to be, and hereby are, upheld.

Chairman, State Technical Review Board

April 22, 2011
Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to

you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.