

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Ber Lem Company
Appeal No. 05-11

Decided: May 19, 2006

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 Statewide Fire Prevention Code ("SFPC") and other regulations of the Department of Housing and Community Development. Enforcement of the SFPC in other than state-owned buildings is by local city, county or town fire prevention departments, when such localities choose to enforce the code. See § 27-98 of the Code of Virginia. An appeal under the SFPC is first heard by a local board of appeals and then may be further appealed to the Review Board. (Ibid.) 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 September of 2005, the City of Chesapeake's Office of the Fire Marshal (the "fire official") issued a notice of violation to Joanne and Edward Falk (the "Falks"), owners of property located at 521 John Etheridge Road. The notice cited the Falks for operating a wrecking yard, junk yard and waste material handling facility without an operational permit and having accumulations of wood, weeds or combustible or flammable waste or rubbish. In addition, the notice informed the Falks that they would be liable for any costs incurred by the City in mitigating a public nuisance.

The Falks appealed the notice to the City of Chesapeake Local Board of Fire Prevention Code Appeals (the "City appeals board"), which ruled to uphold the notice. Further appeal was then made to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

The Review Board first finds that it has no jurisdiction to rule on applications of local fire prevention regulations and therefore declines to consider the citation made by the fire official concerning whether the Falks may be liable for any expenses incurred by the City.

Secondly, the Review Board finds that the fire official's request for the Falks to develop an action plan is not an application of the SFPC since it is not a mandate but a request. Therefore, the Review Board declines to rule on that matter.

The Review Board finds the two issues which are properly before it are (i) whether an operational permit is required and (ii) whether a violation of the SFPC is present in relation to accumulations of wood, weeds, combustible or flammable waste or rubbish.

With respect to the first issue, the Review Board finds that the Falks are not operating a wrecking yard, junk yard or a waste material handling facility. Therefore, no operational permit is required under the SFPC. The Review Board further finds that the fire official was not clear on whether his position was that the Falks were conducting three operations simultaneously or whether it was only a junk yard. In the Review Board staff document, which reflects informal fact-finding proceedings, it is indicated that the fire official stipulated the citation was only for a junk yard. Also, the record contains the text portions of a presentation given by the fire official to the City appeals board and in Slide No. 5 it states that the nature of the original complaint was that the Falks were operating a junk yard.

Notwithstanding the above, in written arguments submitted by the fire official, it is asserted that the citation is for "the operation of a junk yard and/or for the operation of a wrecking yard, and for the operation of a waste material handling facility."

With respect to whether the Falks are operating a wrecking yard or a waste material handling facility, the Review Board finds that § 201.4 of the SFPC addresses the meaning of those terms and provides that they are to have an ordinarily accepted meaning such as the context implies. Therefore, the Review Board finds that the ordinary meaning of a wrecking yard is a business operation which accepts materials for crushing or dismantlement or for metal recycling similar to a scrap yard. Similarly, the Review Board finds that the ordinary meaning of a waste material handling facility is a business operation for the sorting of recyclable or other materials for resale. The evidence and testimony presented clearly indicates that the Falks are not operating either.

With respect to whether the Falks are operating a junk yard, again using § 201.4 of the SFPC¹, the Review Board finds

¹ The 2000 edition of the SFPC was in effect when the citation was made. The 2003 SFPC, which is currently applicable, contains identical requirements for operational permits and definitions, except that § 201.4 of the 2003 SFPC specifies that Webster's Third New International Dictionary of the English Language, Unabridged, shall be considered as providing ordinarily accepted meanings. In determining the meaning of the term "junk yard," the Review Board considered definitions from Merriam-Webster's Collegiate Dictionary, Tenth Edition, the American Heritage Dictionary of the English Language, Fourth Edition and Princeton University's WordNet, 2003.

that the ordinary meaning of the term "junk yard" is a business operation for the resale of car parts, scrap metal or other previously used materials. While the Falks have a number of vehicles and different types of equipment at the site, there is no evidence that they have a business involving resale of any parts of the vehicles or equipment or that they have any operations which would qualify as junk yard operations.

In consideration of the second issue, the Review Board finds that the fire official, in his citation of § 304.1.1 of the SFPC for the accumulations of wood, weeds, combustible or flammable waste or rubbish, failed to give proper deference to the charging provision, § 304.1, in applying § 304.1.1. Section 304.1 states as follows:

"304.1 Waste accumulation prohibited. Combustible waste material creating a fire hazard shall not be allowed to accumulate in buildings or structures or upon premises. (Emphasis added.)

As § 304.1.1 is a subsection of § 304.1, those materials identified in § 304.1.1 are only prohibited to the extent that they are creating a fire hazard in accordance with § 304.1.

The Review Board finds that the fire official did not specifically identify the materials that he considered to be creating a fire hazard at the site. Additionally, on review of the pictures of the site and in consideration of the testimony presented, the Review Board does not find any concentration of

materials or vegetation which create a fire hazard. Evidence was presented that the land has been used for farming in the past and it currently appears to have only the normal weed growth associated with fields sitting fallow. In addition, the various materials and vehicles on the property are placed in a fairly orderly and non-cluttered manner and are surrounded by ample open space. Furthermore, the areas of the property in question are not in close proximity to residential, commercial or industrial areas where there would be an immediate concern of the spread of fire.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the fire official's citations for the lack of an operational permit and for a violation of § 304.1.1 of the SFPC to be, and hereby are, overturned.

The appeal is granted.

/s/*

Chairman, State Technical Review Board

7/21/2006

Date Entered

***Note: The original signed final order is available from Review Board staff.**

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.